

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE: . Case No. 23-13359-VFP
. .
BED BATH & BEYOND INC., . M.L.K. Federal Building
. 50 Walnut Street, 3rd Floor
Debtor. . Newark, NJ 07102
. .
. . April 24, 2023
. . 2:16 p.m.
.

TRANSCRIPT OF FIRST DAY MOTIONS

BEFORE HONORABLE VINCENT F. PAPALIA
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Cole Schotz P.C.
BY: MICHAEL D. SIROTA, ESQ.
WARREN A. USATINE, ESQ.
FELICE R. YUDKIN, ESQ.
25 Main Street
Hackensack, New Jersey 07601

Kirkland & Ellis LLP
BY: JOSHUA A. SUSSBERG, ESQ.
EMILY E. GEIER, ESQ.
DEREK I. HUNTER, ESQ.
ROSS J. FIEDLER, ESQ.
CHARLES B. STERRETT, ESQ.
601 Lexington Avenue
New York, New York 10022

Audio Operator: Juan Filgueiras

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Continued):

For the U.S. Trustee: U.S. Department of Justice
Office of the U.S. Trustee
BY: FRAN B. STEELE, ESQ.
ALEXANDRIA NIKOLINOS, ESQ.
MARTHA HILDEBRANDT, ESQ.
One Newark Center, Suite 2100
Newark, New Jersey 07102

For the Pre-Petition ABL
ABL Administrative Agent: Greenberg Traurig, LLP
BY: ALAN J. BRODY, ESQ.
500 Campus Drive, Suite 400
Florham Park, New Jersey 07932

Davis Polk
BY: MARSHALL HUEBNER, ESQ.
ADAM L. SHPEEN, ESQ.
450 Lexington Avenue
New York, New York 10017

For Sixth Street
Specialty Lending, Inc.: Duane Morris LLP
BY: MORRIS S. BAUER, ESQ.
SOMMER ROSS, ESQ.
1 Riverfront Plaza
1037 Raymond Boulevard
Suite 1800
Newark, New Jersey 07102

Proskauer Rose
BY: DAVID M. HILLMAN, ESQ.
CHARLES A. DALE, ESQ.
MEGAN R. VOLIN, ESQ.
REUVEN C. KLEIN, ESQ.
11 Times Square
New York, New York 10036

For Hilco Merchant
Resources, LLC and
Gordon Brothers Retail
Partners, LLC: Troutman Pepper Hamilton Sanders
LLP
BY: JESSICA D. MIKHAILEVICH, ESQ.
875 Third Avenue
New York, New York 10022

Troutman Pepper Hamilton Sanders
LLP
BY: STEPHEN M. FOX, ESQ.
400 Berwyn Park
899 Cassatt Road
Berwyn, Pennsylvania 19312

TELEPHONIC APPEARANCES:

For Unsecured Bond
Holders:

Glenn Agre Bergman and Fuentes
BY: KURT A. MAYR, ESQ.
1185 Avenue of the Americas
22nd Floor
New York, New York 10036

National Association of Attorneys
General
BY: KAREN CORDRY, ESQ.
1850 M Street NW, 12th Floor
Washington, DC 20036

- - - - -

I N D E XEXHIBITS

<u>Number</u>	<u>Description</u>	<u>Evid</u>
10	Ms. Etlin's declaration	30
36	Mr. Kurtz's declaration	32
37	Ms. Etlin's second declaration	31

1 THE COURT: Okay. Good afternoon. It is Monday,
2 April 24, 2023. This is the United States Bankruptcy Court for
3 the District of New Jersey and we are here on 16 first day
4 matters in the case of Bed Bath & Beyond Inc., 23-13359, and
5 the many affiliated debtors that also filed.

6 Well, welcome to all that are here and I will ask for
7 appearances, but it looks like there's a lot of appearances
8 here. So why don't we get started with the debtor.

9 MR. SIROTA: Your Honor, Michael Sirota. I'm here
10 with my partners, Warren Usatine, Felice Yudkin, Cole Schotz
11 P.C., co-counsel to the debtors and it's great to see you in
12 person. It's been a long time.

13 THE COURT: Yep. Since the pandemic almost.

14 MR. SIROTA: Exactly. I'd like to introduce a great
15 friend, and more importantly, a great lawyer, Joshua Sussberg,
16 from Kirkland & Ellis, and Mr. Sussberg will introduce his
17 colleagues. And after appearances are entered, Mr. Sussberg
18 will, with the Court's permission, provide an overview, if
19 that's acceptable.

20 THE COURT: Okay. That sounds like a fine way to
21 proceed.

22 MR. SIROTA: Thank you.

23 THE COURT: Mr. Sussberg?

24 MR. SIROTA: Just your appearance.

25 MR. SUSSBERG: Thank you, Your Honor. Joshua

1 Sussberg from Kirkland & Ellis on behalf of Bed Bath & Beyond.
2 I wasn't sure if you were taking appearances of everyone in the
3 courtroom or you just wanted to get into it.

4 THE COURT: Well, I guess, Mr. Sirota was saying that
5 he was going to -- you were going to make your appearance and
6 introduce your colleagues and then we were going --

7 MR. SUSSBERG: You'll take --

8 THE COURT: -- take the other --

9 MR. SUSSBERG: -- other appearances.

10 THE COURT: -- appearances and --

11 MR. SUSSBERG: Happy to do so. I am joined by my
12 partners, Emily Geier and Derek Hunter and Ross Fiedler and
13 Charles Sterrett. Thank you, Your Honor.

14 THE COURT: Good afternoon and welcome.

15 MS. STEELE: Good afternoon, Your Honor. Fran
16 Steele, Alex Nikolinos, and Martha Hildebrandt on behalf of the
17 United States Trustee.

18 THE COURT: Good afternoon.

19 MR. BRODY: Good afternoon, Your Honor. Alan Brody,
20 Greenberg Traurig, on behalf of JPMorgan Chase, the prepetition
21 ABL administrative agent.

22 And, Your Honor, I'd also like to introduce, from
23 David Polk, Marshall Huebner and Adam Shpeen, whose admissions
24 *pro hac* have been filed and, of course, Your Honor, we ask that
25 they be allowed to appear today.

1 THE COURT: Okay. That's, of course, I'll
2 perfunctorily if anyone has any objection, but I'm going to
3 allow their *pro hac vice* appearance today. Certainly given the
4 circumstances, it's appropriate.

5 MR. BRODY: Thank you, Your Honor.

6 UNIDENTIFIED SPEAKER: Thank you, Your Honor. It's
7 an honor to be in front of you.

8 THE COURT: Good afternoon.

9 MR. BAUER: Good afternoon, Your Honor. Mo Bauer and
10 Sommer Ross, with Duane Morris, on behalf of Sixth Street
11 Specialty Lending, the FILO agent. And I have with me David
12 Hillman, Chad Dale, Megan Volin, and Reuven Klein of the
13 Proskauer Rose firm, and we filed motions for their *pro hac*
14 *vice* admissions with Your Honor, which are obviously pending,
15 and we would like them to be able to speak today also.

16 THE COURT: Well, good afternoon and the same applies
17 to you.

18 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

19 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

20 MR. BAUER: Thank you, Your Honor.

21 THE COURT: There are no other appearances?

22 MS. MIKHAILEVICH: And, Your Honor, Jessica
23 Mikhailevich, from Troutman Pepper LLP, on behalf of Hilco
24 Merchant Resources, LLC and Gordon Brothers Retail Partners,
25 LLC. I'm also going to apply for admissions *pro hac vice*, also

1 in the file for docket, for Stephen Fox from Riemer Braunstein.

2 THE COURT: Okay. Good afternoon.

3 MR. FOX: Good afternoon, Your Honor.

4 THE COURT: And your appearance reminds me of one
5 little procedural matter is that if you could, if you're going
6 to appear or participate in any of the hearings, to just come
7 up to the podium so that we can hear you and you can actually,
8 more importantly, be recorded -- or as importantly be recorded.
9 Thank you.

10 There were a number of people, as I understand it,
11 that requested appearances on listen only, which is, you know,
12 a relic of ours, Court Solutions also appearances. But if no
13 one else is appearing, then I think we are on to Mr. Sussberg.

14 MR. MAYR: Your Honor? Your Honor, can you hear me?

15 THE COURT: Oh, yes. I'm sorry.

16 MR. MAYR: Yeah, sorry. This is -- I can't make it
17 to the podium obviously, but this is Kurt Mayr from Glenn Agre
18 Bergman & Fuentes. We're appearing today for a group of
19 unsecured bond holders, a number of investment funds and
20 institutional holders of the unsecured bonds of the debtor.

21 THE COURT: Okay. Thank you.

22 MS. CORDRY: And Your Honor?

23 THE COURT: You did not come through for some reason
24 just before. Okay.

25 Any other appearances --

1 MS. CORDRY: This is --

2 THE COURT: -- from -- via Zoom?

3 MS. CORDRY: Your Honor, this is Karen Cordry. Can
4 you hear me?

5 THE COURT: Yes.

6 MS. CORDRY: Yes. Hi. I'm with the National
7 Association of Attorneys General, the bankruptcy counsel there.
8 I am not trying to file a *pro hac* appearance yet. Had a few
9 comments on the going-out-of-business sale motion that I want
10 to be able to make as appropriate when the time came. It would
11 be representing states if we have an issue going forward.
12 Hopefully, they will be relatively minor comments and we can
13 wrap them up. Thank you.

14 THE COURT: Thank you.

15 Okay. Seems to be it, Mr. Sussberg.

16 MR. SUSSBERG: Thank you, Your Honor. Again, for the
17 record, Joshua Sussberg, from Kirkland & Ellis, on behalf of
18 Bed Bath & Beyond.

19 First and foremost, I wanted to thank you and your
20 staff for hearing us on such short notice. It's very important
21 some of the relief we're seeking, all of the relief, but most
22 importantly we have a payroll due on Thursday --

23 THE COURT: Uh-huh.

24 MR. SUSSBERG: -- and we have 14,000 employees that
25 are counting on that payroll. And in order to be in a position

1 to have Mr. Huebner's clients do whatever it is they do at
2 JPMorgan to turn the accounts back on, it was important to be
3 in court quickly. So thank you, Your Honor.

4 THE COURT: You're quite welcome and we really
5 certainly recognize the urgency of the situation from the
6 papers that were filed.

7 MR. SUSSBERG: Thank you. Thank you.

8 As I look around the room, a lot of friends and
9 colleagues and people that I have met throughout the course of
10 this matter, there's a ton of collective retail experience in
11 many shapes and sizes. But when it comes to Bed Bath & Beyond,
12 at least for me, there are a lot of firsts.

13 There was my first day at college where I went with
14 my mother to Bed Bath & Beyond on Erie Boulevard in Syracuse,
15 New York.

16 THE COURT: Ah.

17 MR. SUSSBERG: There was my first day of law school
18 in New York City where I went, again, with my mother to Bed
19 Bath & Beyond to get whatever I needed for my new apartment.
20 There was the first --

21 THE COURT: Well, I'm a little older than you so I
22 went with my daughter.

23 MR. SUSSBERG: There you go.

24 (Laughter.)

25 MR. SUSSBERG: Well, then I -- and then I moved in

1 with my then girlfriend, now wife, and we had an apartment and
2 went to Bed Bath & Beyond on East 61st Street in New York to
3 get that apartment ready. And then we had our first son and I
4 made 100 trips to Bed Bath & Beyond on the west side because I
5 never got the right formula or the right diapers.

6 And that's the first time I visit my now in-laws and
7 I saw the Bed Bath & Beyond coupon stacked from floor to
8 ceiling and I might have taken a few. And then, of course,
9 when we moved out to Westchester, New York, I remember visiting
10 on the very first day we were there the Bed Bath & Beyond on
11 Central Avenue.

12 It's also the first time that I have advised a
13 company that received an acceleration notice from its lenders
14 and the entire secured cash stack. And on the heels of that
15 notice, it's the first time I have ever represented a company
16 in distress that was able to access the equity markets not
17 once, but twice.

18 And I also hope, Your Honor, that this is the first
19 time that we have started a wind-down and halted it because we
20 figured out a going-concern solution. And we will spend some
21 time today talking, Your Honor, about what we're going to do
22 and what we have continued to do to figure out a way to save
23 some or all of Bed Bath & Beyond and buybuy BABY. I know
24 everybody on the company's side is going to do everything in
25 its power to do just that.

1 I do have a presentation that I wanted to run through
2 to give Your Honor some background, but I want to make a few
3 introductions first in the courtroom.

4 THE COURT: Okay.

5 MR. SUSSBERG: Today, we have Ms. Sue Gove, who is
6 our chief executive officer, and we'll talk about the company
7 under Ms. Gove's leadership. We have David Kastin, the
8 company's general counsel; Susie Kim, she is our Senior Vice
9 President Investor Relations and Treasury; and we have Julie
10 Strider. Where's Julie? She is the vice president of
11 Communications.

12 You have also seen, Your Honor, that we submitted
13 three declarations or maybe four declarations. Ms. Geier will
14 clean that up for me. The first was Ms. Holly Etlin's
15 declaration. She is the recently appointed chief restructuring
16 officer and interim CFO from AlixPartners. And we have
17 Mr. David Kurtz from Lazard, the company's proposed investment
18 banker, and we'll get into those declarations as we proceed.

19 THE COURT: Okay.

20 MR. SUSSBERG: So if we could please share the
21 presentation? No clicker.

22 Briefly, Your Honor, and I think you have heard from
23 folks, but the debtors' professionals, Kirkland Cole Schotz,
24 Lazard, AlixPartners were being advised by A&G Realty Partners,
25 C Street Advisory Group on communications and Kroll is our

1 proposed claims and noticing agent.

2 So if we go to the next slide, you have heard from
3 folks, the ABL facility, Davis Polk & Greenberg, as well as FTI
4 Consulting, and then the FILO is Proskauer, Duane Morris, M3,
5 Houlihan Lokey. I'm sure we'll hear from Mr. Hillman and
6 Mr. Huebner throughout the course of the day.

7 As far as a business overview and a little bit of
8 history here, Your Honor, this is a 52-year-old company that, I
9 don't say this lightly, is an iconic brand and it all started
10 pretty humble beginnings.

11 1971, Warren Eisenberg and Leonard Feinstein, here in
12 New Jersey, opened the first what was then called Bed 'n Bath
13 and they started this company with \$100,000 and it was humble
14 beginnings. The stores were 2,500 square feet. But they had
15 left another retail company because they saw an opportunity
16 where department stores were lagging and speciality retail
17 really had a chance to become something.

18 By 1985, they had 11 Bed 'n Bath stores and they had
19 moved out to the West Coast. By 1987, as the company as was
20 expanding and changing, they were spending money on merchandise
21 not to make the stores pretty, but they decided to change their
22 name because of the treasure trove experience at the stores,
23 hence the beginnings of Bed Bath & Beyond.

24 And it's important to note that in the 1980s, and I
25 think this will be thematic throughout what we talk about, in

1 the face of significant competition, Linens 'N Things and many
2 other stores that came into the space, these people and this
3 company adapted. And they opened its first superstore in
4 Springfield, New Jersey, and that was 20,000 square feet. And
5 the superstore experience and the merchandise that was
6 available really gave the company an edge and that adaptation
7 was important because it led to wild success.

8 And as you'll see, in 1992 the company was first
9 listed on NASDAQ, BBBY. In 1999, sales exceeded one billion
10 dollars for the first time and I think it's important the
11 company decided that rather than using newspaper circular
12 advertising, we're going to use these coupons, and it became a
13 rage and a craze. And I'm pretty sure my mother-in-law still
14 has -- I'm not going to say dozens, thousands of coupons and
15 she did call for advice as to how to utilize those coupons, but
16 we'll get there another moment.

17 In 2003 the company had grown, as you can see on the
18 map, to 575 stores in 44 different states and also in Puerto
19 Rico and the growth continued in 2007 with stores that were
20 opened in Canada. And we'll talk a bit today about what
21 happened in Canada and what's going on in Canada, but those
22 stores have been closed.

23 2008 was an announcement of a joint venture in
24 Mexico. 2018, sales exceeded 12 billion dollars and there were
25 880 stores operating across North America and the company had

1 grown every single year. And we will talk about what happened
2 in 2019, which was the first year that the company experienced
3 significant losses and led to everything that has happened to
4 date.

5 Clicker may be lagging a bit behind. Apologies, Your
6 Honor.

7 THE COURT: That's okay.

8 MR. SUSSBERG: There we go.

9 THE COURT: Oh.

10 MR. SUSSBERG: The two main brands, I think
11 everyone's aware, Bed Bath & Beyond, linens, house appliances,
12 air purifiers, anything you can imagine formed in a racetrack-
13 type setting as the founders had envisioned, so that if you
14 went in to get a mattress linen, you were not leaving with just
15 a mattress linen; you were leaving with lots of other things
16 and I remember that well at college and law school.

17 And then buybuy BABY, prenatal, post-natal,
18 strollers, whatever it could be, and the registry there is one
19 I was familiar with when we were having children and, again,
20 many, many, many trips to buybuy BABY on 7th Avenue.

21 The company currently operates 360 Bed Bath & Beyond
22 stores and 120 buybuy BABY stores and that was part of the
23 transformation plan that Ms. Gove put in place when she took
24 over during the summer of 2022. And it's really the
25 transformation plan that we had sought to implement, and we'll

1 talk about briefly, with some of the equity capital that we
2 were fortunate enough to raise.

3 On the organizational chart, Your Honor, you
4 recognize we have 74 debtor entities. I just wanted to quickly
5 note the non-debtor entities so Your Honor is aware. Those
6 first two boxes at the top are the Canadian entities. Those
7 are part of a Canadian proceeding. We are close to being
8 complete with winding down all Canadian operations, but we will
9 be presenting a motion for a coordination amongst the courts,
10 something that we have done in similar circumstances.

11 The bottom left are the Mexican joint ventures.
12 Those are not part of these proceedings.

13 And then finally, Oak Insurance Company, that's our
14 captive insurer so we did not include that entity in the
15 filing, nor could we.

16 THE COURT: Okay.

17 MR. SUSSBERG: From a governance perspective, Your
18 Honor, I did want to note that we have added three different
19 independent directors to various of the companies' boards. As
20 you'll see at the top, which we note is the sole note issuer of
21 our three series of unsecured bonds that Mr. Mayr is
22 representing, we added Carol Flaton as a director.

23 And then at all of our subsidiary entities, we added
24 Pamela Corrie and John Foster as independent directors and they
25 will be working together to investigate prepetition matters and

1 to deal with any conflict issues that arise in connection with
2 the filing, and Kirkland & Ellis and Cole Schotz will be
3 jointly advising them on their investigation, which commenced
4 prior to the filing of these bankruptcy cases.

5 The capital structure, Your Honor, is relatively
6 straightforward. At the top, we have the ABL that's secured on
7 the inventory in a first priority position, as well as cash and
8 other items of the sort.

9 Behind them is the FILO facility. That's the 6th
10 Street facility. That was entered into in 2022 in the fall
11 designed to provide the company with liquidity to implement
12 Ms. Gove's turnaround plan and buy inventory. And as we note,
13 that facility was increased over the course of the last couple
14 of months in connection with the equity raised. And as I sit
15 here today, it's 547 million outstanding. We also have letters
16 of credit and finance leases. And then as I mentioned, the
17 three series of unsecured bonds.

18 So why we are here, Your Honor, you know, I talked
19 about the company adapting back in the '80s and '90s and moving
20 to the superstore experience and the enlarged space to deal
21 with competition. And while the company has weathered the
22 recession of 2008, as well as the challenging competitive
23 environment in the '80s and '90s, the company did not adapt to
24 the retail e-commerce boom and the founder was quoted in an
25 article saying, "We missed the boat on the internet."

1 And the problem became such that competitors were
2 doing same day or day after pickup at the stores or delivery.
3 And in order to implement that over a period of time takes
4 resources and dedication and the company, at the time back in
5 2010 during the internet boom, did not put the resources in.

6 And ultimately, I think this really is one of the
7 reasons why it led to the ultimate demise of Bed Bath & Beyond.
8 And if you look, in January 2014, right, the internet really
9 started taking hold 2010 with the explosion of Amazon, but in
10 January '14, Bed Bath & Beyond stock was trading at \$80 a
11 share. When you look at 2018, it was down to \$14 a share and
12 that represented a loss of \$15 billion in value and I think a
13 lot of that is attributed to a failure to adapt, which is
14 really, really important in a retail environment.

15 THE COURT: Has that been fixed?

16 MR. SUSSBERG: It has been fixed. The question
17 became it was a little bit --

18 THE COURT: Too late.

19 MR. SUSSBERG: -- too late.

20 Point there.

21 So in early 2019, Your Honor, the company reported
22 its seventh consecutive quarter of declining same store sales
23 and its first annual loss and sales decline in 30 years.
24 Profits were down 48 percent year over year. Again, it's first
25 unprofitable year.

1 And so, as a result of unprofitability and unrest,
2 there was an activist campaign, as you can see, and that led to
3 the CEO of 16 years stepping down and an overhaul of the board
4 of directors. And several of the board members that were
5 appointed in '19 remain on the board today.

6 And then in November of 2019, a new CEO was appointed
7 and this was a former merchandising expert at Target. And he
8 came in and had a different vision and he was going to move to
9 private label and really kind of retool the business, which was
10 successful at Target, at Bed Bath & Beyond with many different
11 private labels. And unfortunately, as we'll talk about, it
12 missed all expectations and the consumer was not interested.
13 The consumer wanted the KitchenAid brands. The consumer wanted
14 the brands that it had come to know and it did not have an
15 ability to understand nor comprehend the expedited nature in
16 which these private labels were introduced.

17 And so on the next slide, and we'll get into some of
18 this, but we just wanted to highlight that there really were
19 both internal and external disruptions. The activist campaign
20 reshaped the board and management and then the shift away from
21 private label products, you know, really caused harm to the
22 business.

23 We had a share buyback, that I will address, for a
24 billion dollars because people thought that the intrinsic value
25 of the equity did not reflect reality and it ultimately ended

1 up causing the company to burn significant cash that otherwise
2 should have been used for operations.

3 We had another management change. Ms. Gove took over
4 in the summer of 2022 and we note the shareholder action at the
5 top on the right related to the meme stock craze, which we will
6 also speak about.

7 And obviously COVID is part of the story, Your Honor,
8 as you're well aware, and I know you presided over the Modell's
9 case, which happened right when COVID happened and I had a
10 similar experience with Pier 1.

11 THE COURT: Right.

12 MR. SUSSBERG: We were in court one week. We were
13 home the next. It was devastating from a retailer's
14 perspective and it was the cause for a host of consternation
15 across the industry. And then also, we have had supply chain
16 issues that caused deterioration in product and a host of
17 problems that led us to where we are today.

18 Just briefly, Your Honor. You know the pitfalls of
19 private label, I think we hit it very well in Ms. Etlin's
20 declaration. We tried to move too fast and too quick into a
21 whole new strategy that effectively lost sight of the consumer
22 and the consumer's preference. And implementing nine different
23 private label products as quickly as we were trying to do just
24 didn't take hold and then, of course, the pandemic to pile on
25 and it really caused a lot of disruption.

1 Now private label products carry higher margin but if
2 you implement it over time, maybe you reap the rewards, but we
3 went too quickly and it proved to be a problem. It also
4 strained the supply chain as we note in the slide. It's longer
5 lead times for private label products.

6 And as you're implementing that and then dealing with
7 the pandemic, the supply chain was highly disrupted as a result
8 not just because of the private label, but because of the macro
9 environment. And as a result, as we note, we ran short on 200
10 of our best selling products costing the debtors an estimated
11 \$100 million in sales.

12 THE COURT: I read somewhere there was unfulfilled
13 orders that year, is that right?

14 MR. SUSSBERG: Unfulfilled orders.

15 THE COURT: Okay.

16 MR. SUSSBERG: Yes.

17 THE COURT: Of over --

18 MR. SUSSBERG: And close --

19 THE COURT: -- 100 --

20 MR. SUSSBERG: -- to \$200 million.

21 THE COURT: Over 200 million.

22 MR. SUSSBERG: Yes. COVID, I don't need to belabor,
23 but COVID cost the company. Obviously shutdown all of its
24 locations for a period of time. It was a difficult time for
25 any retailer with workforce issues and furloughs, as well as

1 not understanding local mandates across the country where you
2 have stores that you want to be able to operate. Maybe you get
3 an emergency relief to do so, but it caused major disruption at
4 a time where the company really could not afford that
5 disruption.

6 I mentioned -- go back one -- the billion dollar
7 share buyback. That occurred beginning in late 2020. This is
8 at a time where the company had a billion five of cash and a
9 billion two of debt and the company endeavored on a share
10 buyback program, again, because they believed that the
11 intrinsic value was priced too low and that it was going to
12 increase ultimate value for shareholders and for the company.

13 It proved to be a cash strain on the company at a
14 time where no one anticipated that COVID was going to wreck
15 havoc that it did and prove to be very disruptive from a
16 business standpoint.

17 Then the meme stock madness. Ryan Cohen, well-known
18 meme stock investor, seized on the opportunity at Bed Bath,
19 similar to GameStop, as well as others. He purchased a ten
20 percent stake in the company with a large call option. And
21 then March to August, he exited his position. And as soon as
22 he exited, literally overnight with Securities filings, the
23 stock tanked and caused it to crash pretty significantly. And
24 on the heels of that, you see the shareholder action for 1.2
25 billion in securities fraud that was filed around that time.

1 So now Ms. Gove takes over during the summer of 2022
2 and, you know, I say all the time, she had the job of turning
3 around the Titanic. And when I tell you, I don't think I have
4 ever met someone with more conviction, dedication and
5 perseverance than Ms. Gove, every single day she works because
6 she cares about the people and she believes in the thesis and
7 she's still doing it today, and that's why all of us are going
8 to do everything we can to help her turn that Titanic around.

9 And she really went back to basics and she removed
10 several of the private labels and went out and sought to repair
11 vendor relationships. Now the problem after not using those
12 vendors, the KitchenAids and the Calphalons, they go place
13 their products elsewhere. And so bringing the vendors back
14 into the mix, it takes time and it takes resources and it takes
15 confidence in the business, all of which Ms. Gove was tasked
16 with doing in a very short period of time.

17 But she also announced an intention to close
18 significant underperforming stores and, frankly, that's how we
19 got to the footprint we have today because it was her vision
20 that a company could be restructured around the base that we
21 have in place, the 360-or-so Bed Bath stores and the 120 buybuy
22 BABY stores. And you also see, you know, very difficult
23 reductions in force, as well as reductions in overhead, all of
24 which was spearheaded at Ms. Gove's direction.

25 Some of the initiatives that she undertook to help

1 right the business, there was the raising of the 6th Street
2 FILO. That was in the fall of 2022. There was a sale process.
3 Mr. Kurt speaks about this in length in the course of his
4 declaration. Lazard has left no stone unturned, reached 60
5 different parties, 30 of which signed NDAs, some of whom are
6 still looking at the asset, many of whom have dropped out of
7 the process.

8 We had a first at the market offering. That was
9 100 -- \$75 million. Helped re-balance inventory and address
10 the balance sheet. Ms. Gove had a fall supplier engagement
11 where she got everyone together to try to build confidence in
12 the business and then we did launch an exchange offer that,
13 unfortunately, failed in 2022.

14 Unfortunately, following the holiday season, the all
15 important holiday season in '22, there was no reprieve, and
16 there has been no reprieve throughout the course of 2023. And
17 in early 2023, we received a notice of acceleration, as well as
18 the application of default interest and, frankly, all the
19 professionals in this room were tasked with preparing
20 contingency plans and potentially being in front of Your Honor
21 all the way back January.

22 And so how did we get to the end of April? We had
23 two different parties approach the company interested in
24 investing. I know it's wild for a restructuring lawyer who's
25 preparing for Chapter 11 to appreciate this concept, but two

1 different investors were interested in buying equity in the
2 company. And the reason that the Hudson Bay proposal was so
3 attractive, Your Honor, is because based upon where share price
4 was, depending upon the time of the tranche of commitment from
5 Hudson Bay, the company had an opportunity to access up to a
6 billion dollars of capital.

7 And that billion dollars of capital, over the course
8 of a year, so long as the stock price stayed above certain
9 minimum thresholds, would have provided Ms. Gove and the team
10 with the money and the resources to turn that business around
11 and implement the various pillars that Ms. Gove sought to
12 implement back in the summer of 2022, including getting all the
13 merchandise and the inventory suppliers back into the company.

14 And that's the reason why the board thought it made
15 complete sense and, frankly, it's the reason why, I think, we
16 were able to convince our lenders that back in February, we
17 needed to pause. We needed to de-accelerate the loans. We
18 needed to amend and modify the credit agreements and we needed
19 to take an opportunity to capitalize on this once-in-a-lifetime
20 opportunity to bring equity into this company and see if we
21 could access the remaining billion dollars.

22 And the reality, Your Honor, as you have seen in the
23 pleadings, while we were able to get over 300 million dollars
24 from Hudson Bay, we ended up not keeping the share price at a
25 certain point that we were able to access additional capital

1 and, as a result, the Hudson Bay deal was terminated.

2 Just to note, Your Honor, because this was part of
3 the calculus in convincing our lenders and ultimately the board
4 making a decision, Ms. Gove's vision really focused on three
5 buckets: customer centric focus; again, rightsizing the
6 operations; closing additional underperforming stores and
7 investing in inventory. And it was with these three pillars
8 and potentially a billion dollars of capital from Hudson Bay
9 that we really thought we had a chance to turn things around.

10 Now, on the heels of the Hudson Bay transaction
11 terminating, we actually were able, yet again, to pull a rabbit
12 out of a hat and get another ATM equity transaction with B
13 Reilly Securities. And, again, kudos to Ms. Gove, Mr. Kastin,
14 and the Lazard team for pulling this through. It allowed us to
15 sell up to \$300 million of shares at a time through the market
16 that we were able to capitalize on and we were able to secure
17 additional equity proceeds.

18 And yet, again, our lenders modified, amended their
19 documents to allow this to happen so that we could get more
20 time because this really was a function of getting more time
21 because, at the end of the day, if we ran out of these
22 opportunities we all knew what the Chapter 11 would ultimately
23 look like, notwithstanding the sale process that we're running
24 and so we did take advantage of that.

25 As far as where we are now, Your Honor, and the path

1 forward, you know, I think it's pretty clear in the pleadings
2 that obviously the company has significant overhead and cost
3 and we need to minimize that burn as quickly as we can. And as
4 a result, we have affected and are in the process, and we'll be
5 seeking authority from Your Honor, to run a dual-track process.
6 We are going to commence the wind-down of all of our open
7 locations, but we are not, under any circumstances, giving up
8 on a going concern for some or all of the remaining stores and
9 there will be nothing that would make me happier than be able
10 to stand up here in front of Your Honor in a month or two
11 months' time and say, we found a buyer for 200, 300 or 400 of
12 the remaining stores. We're going to get all of our vendors
13 together. We're going to start a new inventory program, all of
14 which we will continue to explore because, frankly, I think the
15 generations that come should have an opportunity to go to a Bed
16 Bath & Beyond with their mother or their wife or for their kid,
17 just like I was able to.

18 And no one on our side is going to stop working until
19 we have run out every single ground ball. And you can have our
20 word for that and I want to assure everyone out there that
21 would like to shop at a Bed Bath & Beyond again that we are
22 committed to doing everything we possibly can to --

23 THE COURT: Well, if you can --

24 MR. SUSSBERG: -- make that come to fruition.

25 THE COURT: If you can do that, there will be a lot

1 of happy people, including myself, and many other people here
2 because that's what we're ultimately here for and try to do the
3 best we can for the various stakeholders and I see where you're
4 headed.

5 MR. SUSSBERG: Thank you, Your Honor. Thank you,
6 Your Honor.

7 Just briefly, I'm going to cede the podium to
8 Ms. Geier to talk about our DIP financing. We did have a
9 pretty healthy agenda. I'm hopeful many of these are non-
10 controversial. We'll try to go through them quickly, but I do
11 think it makes sense, if it's okay with Your Honor, to take up
12 the DIP financing first.

13 THE COURT: That's what I was -- I was going to ask
14 you if that's the order. I was going to ask the parties what
15 order they wanted to go in and if you think the DIP should go
16 first, let's go first.

17 MR. SUSSBERG: Yeah. We'd like the DIP to go first
18 and then we'll follow the agenda in order.

19 THE COURT: Okay.

20 MS. GEIER: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MS. GEIER: Emily Geier from Kirkland & Ellis on
23 behalf of the debtors.

24 THE COURT: Yes. Go ahead. I have got --

25 MS. GEIER: Nice --

1 THE COURT: -- I have gotten some pleadings from you
2 and some pretty long orders and --

3 MS. GEIER: Just a few. And --

4 THE COURT: -- and --

5 MS. GEIER: -- it's just me putting them all together
6 too, so I have been pretty tired.

7 Your Honor, there is, obviously, an army involved to
8 get this number of papers prepared, but this is sort of the
9 point of it all. How are we going to pay for it? How are we
10 going to get through these cases and get to what should be a
11 Chapter 11 plan.

12 So let's -- perhaps we can get the less interesting
13 parts out of the way regarding the declarations.

14 THE COURT: Okay.

15 MS. GEIER: On this slide, I have just listed the
16 various docket numbers. As I'm sure Your Honor noticed, the
17 DIP documents have trickled in throughout the day and so
18 there's a lot of docket numbers involved.

19 But the most important one before we get there is
20 actually Docket Number 10, which is Ms. Etlin's declaration in
21 support of the filing of the cases and the various first day
22 motions. I was wondering if Your Honor would view this as an
23 appropriate time to go ahead and admit that into evidence?

24 THE COURT: Okay. Well, so what --

25 MS. GEIER: Whatever your --

1 THE COURT: -- I -- the way --

2 MS. GEIER: -- preference is.

3 THE COURT: -- I handle that is to say that -- and
4 now you're talking about Docket Number 10 of Miss --

5 MS. GEIER: That's correct, Your Honor.

6 THE COURT: Yeah. Ms. Etlin's declaration in support
7 of the first day motions. And I will -- the way I do that is I
8 ask if there's anyone who is participating who has any
9 objection to the admission of that declaration as evidence and
10 whether they would seek to cross-examine on that or the direct
11 testimony. I ask about that as a matter of course and so I'll
12 do it again today.

13 MS. STEELE: The U.S. Trustee has no objection, Your
14 Honor, and we hope that we won't have the need for cross-
15 examination.

16 THE COURT: Okay. Anyone else?

17 (No audible response.)

18 THE COURT: All right. So Ms. Etlin's declaration at
19 Docket Number 10 is admitted into evidence.

20 (Docket #10 admitted into evidence.)

21 MS. GEIER: Fantastic. Thank you, Your Honor.

22 And then also on Docket Number 36 is the declaration
23 of David Kurtz of Lazard, our investment banker, in support of
24 the debt motion as well.

25 THE COURT: And I make the same statement as to

1 Docket Number 37, the second Etlin declaration in support of
2 the DIP motion.

3 MS. STEELE: No objection, Your Honor.

4 THE COURT: And having heard no other responses,
5 we'll admit that Docket Number 37 into evidence.

6 (Docket #37 admitted into evidence.)

7 MS. GEIER: Thank you, Your Honor. And then,
8 finally, Docket Number 37 is the declaration of Ms. Etlin again
9 but in support of the debt motion. So --

10 THE COURT: Right.

11 MS. GEIER: Same person.

12 THE COURT: Yep.

13 MS. GEIER: Different motion.

14 MS. STEELE: No objection, Your Honor.

15 THE COURT: Okay.

16 MS. GEIER: So just to confirm, Your Honor. Do we
17 have Docket Numbers 36 and 37 admitted into evidence?

18 THE COURT: I thought --

19 MS. GEIER: I just want --

20 THE COURT: -- you said --

21 MS. GEIER: -- to make sure --

22 THE COURT: -- 37.

23 MS. GEIER: I apologize.

24 THE COURT: I thought you had them both.

25 MS. GEIER: It very well could be --

1 THE COURT: Yeah. Yeah.

2 MS. GEIER: -- probably almost certainly is my brain
3 saying --

4 THE COURT: All right. Well --

5 MS. GEIER: -- the wrong numbers out loud.

6 THE COURT: -- you were talking also Mr. Kurtz's then
7 at 36?

8 MS. GEIER: That's correct, Your Honor.

9 THE COURT: All right. The same statement?

10 MS. STEELE: Yes, Your Honor. No objection.

11 THE COURT: All right. And having heard no other
12 objections, Number 36 will also be admitted.

13 (Docket #36 admitted into evidence.)

14 MS. GEIER: Thank you, Your Honor. I think --

15 THE COURT: Thank you.

16 MS. GEIER: -- we are done now with the --

17 THE COURT: With the --

18 MS. GEIER: -- with at least the declarations.

19 THE COURT: Okay.

20 MS. GEIER: So --

21 THE COURT: They may not have been exciting, but
22 there's a lot of stuff --

23 MS. GEIER: -- they -- they're --

24 THE COURT: -- in from there.

25 MS. GEIER: There is a lot of exciting stuff in there

1 to read. I will not read them directly to the group because
2 that's -- we have a lot to get through today.

3 Okay. So I just wanted to back up for one moment
4 before the petition date and sort of take us through a bit of
5 the time taking us from where we were, say in February through
6 the petition date, and then what we propose for the DIP
7 financing. I think it's helpful to see that the numbers as
8 they changed and effectively the FILO came to sit where the ABL
9 position was. The FILO sort of took on more and more of that
10 role.

11 Here, in February 2023, you see the FILO facility at
12 475 million. That was after they injected 100 million of
13 additional loans, sort of subbing out the position of the ABL
14 to facilitate the equity transactions that Mr. Sussberg went
15 over earlier.

16 So they were at 375 originally, then they were at
17 475. And then as we got to -- and you can see obviously that
18 sizable over advanced position that the debtors were in, as of
19 that date just prior to the infusion of the equity capital.

20 So when we reached the petition date -- well, you can
21 see there's another ABL over advance. That was a new over
22 advance because last week we found ourselves returning to the
23 over advance position. There were critical obligation that the
24 debtors needed to pay. These included payroll, freight, taxes,
25 not items that could be delayed.

1 And so the lenders joined together and both
2 approved -- and by "both" I mean the ABL lenders and the
3 FILO -- approved this ABL over advance position, which, of
4 course, had the effect of putting the FILO lenders an
5 additional 45 million -- I'm sorry -- 54 million behind.

6 But the company got these critical funds that at
7 least enabled it to sort of land into Chapter 11, but we are
8 not done because we still need the additional -- there we go.
9 So this is --

10 THE COURT: Oh.

11 MS. GEIER: -- the petition date and here we are
12 showing what we propose for the debtor-in-possession financing.
13 So you can see the 54 million and 129 of the ABL facility
14 listed above. And then now we have introduced the DIP
15 facility. This is the funding that we need for these cases.

16 Then I'll explain later why we need it right now, but
17 just wanted to show visually sort of where it would sit in the
18 stack. This is 40 million of new money, along with 200 million
19 of prepetition FILO loans that sort of get rolled into the DIP.

20 On the next slide, there's key terms to highlight and
21 you can see here again the 40 million of new money, referenced
22 to this rescue loan. One of the most important things that we
23 see when we look at this roll-up is that there's actually 96
24 million at stake -- or there's 94 million at stake because you
25 have the 54 million over advance that was on just prior to the

1 filing and then this additional 40 million.

2 So when you look at them together, you're really
3 talking more about a 2-to-1 roll-up and we previewed that in
4 our papers, but I think it's an important point to sort of
5 level set on what may otherwise be, like, a more in -- what
6 people might find a more interesting aspect of this DIP.

7 And the second point to make, I think, is that these
8 are retail DIPs and particularly in a potential wind-down
9 scenario as we are facing here if the going concern is not
10 found, you often see full roll-up through the creeping ABL roll
11 ups. You know, here we are in the slightly unusual position of
12 having this term loan of new money provided.

13 But what you see is very similar to what we have in
14 other retail deals. You know, even my last retailer of -- in a
15 similar situation was Pier 1 and they had effectively the same
16 ratio involved.

17 And then finally, although the roll-ups do need to
18 occur -- the roll-up does need to occur upon entry of this
19 interim order, we do have -- I think very little harm comes
20 from it, simply because there are not really significant
21 unencumbered assets and the assets that are there, you know,
22 most of those are subject to final entry of the order. So we
23 will still have the final order to really take up those issues.

24 A couple of other points on this slide is just to
25 highlight that there are very fair economic terms here.

1 Mr. Kurtz negotiating would point out that there is, you know,
2 a very reasonable origination fee and the rate on the DIP term
3 loan is actually lower than the prepetition FILO. So the more
4 that is rolled up, you're actually paying a lower interest
5 rate. So --

6 THE COURT: But it's basically, what, five plus the
7 775, is that what it is or --

8 MS. GEIER: Exactly.

9 THE COURT: -- five --

10 MS. GEIER: Yeah, in terms of the rate. So the
11 prepetition FILO interest rate, so for the purpose of adequate
12 protection is that is that the default rate of SOFA, plus 9.75
13 and here we have SOFA plus 7.75. So it's not insignificant
14 that we are able to pay a lower interest rate on that amount.

15 So why do we need this \$40 million and what -- why do
16 we need it today?

17 THE COURT: And the 54 million came in last week
18 for -- in the last --

19 MS. GEIER: That's correct --

20 THE COURT: -- several days?

21 MS. GEIER: -- Your Honor. Exactly. So the debtors
22 had important freight obligations to pay. You know, we have
23 really been playing catch-up as much as possible trying to keep
24 those -- we can't ship it out freight. We can't move our
25 products from warehouses and distribution centers without those

1 freight costs, so those were critical.

2 There was payroll in there because although -- and
3 you'll hear from my partner, Mr. Hunter, about the various
4 aspects of the wages, but the weekly rates are paid at the
5 distribution center. So that was a payroll week for
6 distribution centers and so that funding did need to go out and
7 without that funding, we wouldn't have been able to file here
8 because we couldn't be late.

9 But we still have a hole to fill and it's highlighted
10 right there. So this is the budget that was filed with the DIP
11 credit agreement and it was actually filed, just to help with
12 reference, the docket number -- it was filed at Docket Number
13 41. So in case you didn't see it when it was buried in all the
14 thousands of pages, we put it here.

15 So this is the hole that we need to fill this week.
16 So not in the future, this is right now. And through this
17 first week, we pay payroll and benefits of 42 million and that
18 includes the funding of a \$16 million WARN reserve and I can
19 talk about that in a moment.

20 It includes rent payment to our landlords. It
21 includes May rent and it includes a portion of April stub rent
22 as well. So we can talk about that a little bit more, if Your
23 Honor would like. The freight is also in here. That continues
24 to be a major cost throughout this process you'll see. So
25 that's provided for, as well.

1 All these things together produce -- although we do
2 take in receipts from these sales, it produces still a deficit
3 of 30 million, so we do need the funding to occur so that we
4 can make sure we meet our obligations.

5 I want to highlight a couple of other very key and
6 important aspects from the DIP from the debtors' perspective,
7 key features that we have negotiated for that are contingent on
8 sort of this process working as we have set out.

9 There are three reserves provided for in the DIP that
10 are also our preserved path to a Chapter 11 plan. The first is
11 a \$15 million priority claims reserve. So that insures that
12 the cost of doing business in Chapter 11 is you pay your
13 administrative and priority claims.

14 The debtors are aware of this and that's why this
15 reserve was created. We have negotiated this with the DIP
16 lenders and they're committed to funding under certain
17 conditions.

18 The second is the WARN reserve. As I mentioned, this
19 has been -- this is being funded this week. This is WARN
20 dollars, so these are dollars that occur as a result of sending
21 WARN notices and there are certain requirements for paying a
22 set amount of wages in various states.

23 New Jersey, as Your Honor is probably aware, has a
24 new law in place that requires additional WARN payments to be
25 made. So we have a lot of what you might consider WARN

1 payments in the regular payroll line of the budget. But then
2 there's also the ones that get paid sort of more at the end,
3 and that's what this reserve is for.

4 THE COURT: And that's the reserve is based on your
5 estimate of the liability or is it because I also read that you
6 intended to keep many employees on, even though you sent them
7 WARN Act notices?

8 MS. GEIER: That's correct, Your Honor. So although
9 we send the WARN Act notices, and we are in the process of
10 sending them today and the employees are aware of that, they
11 have been part of those conversations, for those that do
12 receive the WARN notices, they are going out today.

13 Parties do work through that time. So we still need
14 employees in place to do all the important work of making sure
15 that these sales go through, facilitating the going-concern
16 sale process that we are still very much pursuing, and ensuring
17 that we can meet the various obligations of, you know,
18 employees, landlords.

19 We sort of need the whole army behind us and also the
20 store employees. Obviously, we need them to be able to sell --

21 THE COURT: Well --

22 MS. GEIER: -- anything at the stores.

23 THE COURT: -- oh, I'm sure. I know you need the
24 employees. I was just asking if that number is an estimate of
25 your liability giving effect to that you're going to keep a lot

1 of the people on or that's, like, a high number that is being
2 conservative and may --

3 MS. GEIER: It may --

4 THE COURT: -- be lower --

5 MS. GEIER: It may be conservative. There is
6 actually, we would say, that the total number is, in some ways,
7 33 million. So 17 million of payroll going out that some folks
8 call working WARN. It's WARN notice dollars. You have been
9 noticed. You continue to be paid through that period. Those
10 dollars are provided for in the payroll line item of the budget
11 and so 17 million is already just agreed paid out for. This
12 additional 16 million is for items, like, additional severance
13 weeks that come on top pursuant to New Jersey law. Additional
14 time.

15 There are -- there's a very complicated calculation
16 that we can provide to Your Honor. I'm probably not the right
17 lawyer of the group to provide it, but this does represent what
18 we believe to be the full liability and may -- may be even a
19 conservative estimate of that.

20 THE COURT: Uh-huh. Okay.

21 MS. GEIER: And then additionally, there's the wind-
22 down reserve just to make sure that we can finalize the order
23 to leave wind-down of the debtors if we do reach that
24 circumstance.

25 THE COURT: So, Ms. Geier, I'm just going to ask you

1 a question. I'm going to stop you for a second and I'm --

2 MS. GEIER: Yes, sir.

3 THE COURT: -- I just want to ask a question as to
4 how this is all working in practical terms in the sense of you
5 have this, you know, as you called it, the \$30 million hole to
6 fill in the first week, it appears, and then there's this \$15
7 million reserve, \$16 million reserve, \$5 million --

8 MS. GEIER: Uh-huh.

9 THE COURT: -- reserve and there's a roll-up.

10 MS. GEIER: Uh-huh.

11 THE COURT: This might be a little bit of a -- I
12 don't know if you can answer it quickly or not but just for the
13 benefit of myself and I think for everyone around, because
14 there's a lot of words that are going around here and a lot of
15 documents, but it just, in simple terms, to understand how
16 these reserves are going to be funded --

17 MS. GEIER: Um-hum.

18 THE COURT: -- when there's only, right, 15, plus 16,
19 plus 5 is 36. And so that did -- you know, there -- and I know
20 that's -- those are different items. But I'm just saying --

21 MS. GEIER: That's a great --

22 THE COURT: -- it's a lot of money.

23 MS. GEIER: Thank you, Your Honor. You're -- that's
24 absolutely right, Your Honor. Let me clarify. These are not
25 all funded day one. So the WARN reserve is funded day one.

1 The rest are funded through receipts coming in as we liquidate
2 the inventory.

3 So those are spread over time and they'll eventually
4 be fully reserved WARN dollars going in. So \$40 million draw,
5 single draw, today -- or rather tomorrow, assuming that we get
6 approval today. We get the \$40 million in. The roll-up occurs
7 right away, so it becomes a \$240 million DIP obligation with
8 the debtors.

9 Then we, while we have the WARN reserve immediately
10 funded, these other two reserves are funded over time. And
11 then upon the satisfaction of certain conditions in the order,
12 those are released and all DIP liens, other liens are released
13 and so the -- those dollars just become the debtors' at the
14 point.

15 THE COURT: Is there a line for the funding of the
16 reserve in the forecast that you have there?

17 MS. GEIER: Yes, Your Honor. If you go to
18 supplemental items, way --

19 THE COURT: Yeah.

20 MS. GEIER: -- down at the bottom right above net
21 cash flow is a line that says, "supplemental items," and it is
22 approximately a million dollars a week. You can only see a
23 little bit of it here, but the rest of it is funded, you know,
24 throughout and over time.

25 THE COURT: Okay.

1 MS. GEIER: Just briefly. There's also an adequate
2 protection package available and provided for under the DIP
3 financing, because it's also, of course, our consensual use of
4 cash collateral. So we just wanted to show typical adequate
5 protection package and then this chart, which, you know, there
6 will be a quiz on later but I certainly hope we don't want to
7 go through in detail.

8 The DIP milestones are very similar to the ones that
9 Mr. Sussberg already highlighted, but I'll just briefly share
10 what our process looks like from here. This is the time that
11 we have to finalize our plan to pursue our going-concern sale
12 process and either find our buyer or commence an orderly wind-
13 down through a Chapter 11 plan. So we have 120 days
14 effectively to do that and we think that's enough time to get
15 it done.

16 THE COURT: I hope so.

17 MS. GEIER: So with that, Your Honor, unless you have
18 any questions about the details of the DIP, papers that we
19 filed, I do want to highlight that we did file a revised order
20 at Docket Number 69, I believe, just reflecting certain
21 resolutions with landlord, counsel representing various
22 landlords and also the Texas taxing authorities.

23 THE COURT: And so just when you went to that
24 explanation with the supplemental items, which is the -- is one
25 million dollars a week essentially.

1 MS. GEIER: Yes, Your Honor.

2 THE COURT: And then right above that, it says,
3 "other RX flows," and I just don't know what an "RX flow" is.

4 MS. GEIER: It's an excellent question, Your Honor.
5 I don't -- I know which line item you're talking about and I
6 don't know exactly what the substance of it is.

7 THE COURT: Because RX is a prescription or
8 something.

9 (Laughter.)

10 MS. GEIER: Well, fortunately those are not all the
11 costs of my medication. I have --

12 THE COURT: Well, I don't think that --

13 MS. GEIER: -- a pretty good health plan.

14 THE COURT: I don't think that's what that is.

15 (Laughter.)

16 THE COURT: But I just -- I honest --

17 THE COURT: -- you know, I'm being very frank. I
18 don't know what that means, so --

19 MS. GEIER: I can get that answer in, like, one
20 second --

21 THE COURT: Okay.

22 MS. GEIER: -- if you give -- okay.

23 THE COURT: Yeah. Right there would be good.

24 UNIDENTIFIED SPEAKER: It's definitely not
25 prescriptions.

1 UNIDENTIFIED SPEAKER: Sure it is.

2 THE COURT: I'm sorry?

3 UNIDENTIFIED SPEAKER: Same thing.

4 UNIDENTIFIED SPEAKER: It's definitely not
5 prescriptions.

6 THE COURT: No, no, I know. I figured you guys were
7 going to answer though.

8 UNIDENTIFIED SPEAKER: That's the other case.

9 MS. GEIER: Your Honor, the various other
10 restructuring costs are reflected in that line item. They're
11 not professional fees. They're other costs of this case
12 process. So I think any more detail than that and I think we
13 will actually have to get our declarant up here to answer the
14 question.

15 THE COURT: Okay. All right.

16 (Pause)

17 MS. GEIER: Thank you for that pause, Your Honor.

18 THE COURT: Okay. No problem.

19 MS. GEIER: The line items though includes U.S.
20 Trustee fees for that's expected restructuring outflow. In
21 addition, utility deposits so that's why there's that up-tick
22 in week three. It reflects that deposit being placed. And
23 then also freight items also appear in that line item --

24 THE COURT: That was a big number --

25 MS. GEIER: -- as well.

1 THE COURT: -- the freight --

2 MS. GEIER: Yes.

3 THE COURT: -- the freight items was --

4 MS. GEIER: Yes.

5 THE COURT: -- a big number, like --

6 MS. GEIER: Exactly.

7 THE COURT: -- 17 million or something like that.

8 And so that -- in other words, that's going to be -- okay. So
9 that's just going to be paid from the cash flow, in other
10 words?

11 MS. GEIER: That's correct, Your Honor.

12 THE COURT: Okay. All right.

13 MS. GEIER: So --

14 THE COURT: Those are my questions. Thank you,
15 Ms. Geier.

16 MS. GEIER: You're welcome.

17 THE COURT: I hope I pronounced --

18 MS. GEIER: Thank you, Your Honor.

19 THE COURT: -- your name correctly.

20 MR. HILLMAN: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MR. HILLMAN: David Hillman, Proskauer Rose, on
23 behalf of 6th Street Specialty Lending as the DIP agent and
24 FILO agent.

25 May I be heard just to talk about the DIP and not

1 spend too much time on how we got here, but just to offer --
2 you heard from Mr. Sussberg who walked through, in about 30
3 minutes, the company's perspective of how we landed here. I'd
4 like to use three minutes --

5 THE COURT: Okay.

6 MR. HILLMAN: -- to just give you the perspective of
7 the --

8 THE COURT: You could take four or five.

9 MR. HILLMAN: Okay.

10 THE COURT: It's okay.

11 MR. HILLMAN: I won't go over that.

12 So our perspective. You heard from Mr. Sussberg
13 about the company having been around for 52 years. 6th
14 Street's relationship with the company is not even a year old.
15 The initial loan that 6th Street and the FILO lenders made was,
16 as you heard, \$375 million in August and it was to provide
17 liquidity for the company's turnaround plan that you heard
18 Mr. Sussberg describe.

19 The company used those loan proceeds, in part, to pay
20 overdue vendors and to get vendor support going forward. Going
21 into, as Mr. Sussberg talked about, the critical holiday
22 season, the company was significantly off its plan and, you
23 know, the poor results during the holiday season started a
24 rapid, downward spiral. So within a quarter, after making that
25 loan, the company's liquidity position was substantially off.

1 I think the numbers are more than 530 million off their plan.

2 During the next four months the company, while in the
3 some extreme distress, did try the maneuvers that Mr. Sussberg
4 outlined and they were unsuccessful. And during that entire
5 time, 6th Street and FILO lenders worked with the company to
6 try to right the ship. This was a challenge. At all times we
7 worked with the company to try to avoid the collapse of an
8 iconic brand and we provided hundreds of millions of dollars to
9 the company, which preserved jobs and it supported payments to
10 landlords, vendors, shippers and suppliers.

11 This is interesting. In four months, 6th Street and
12 the FILO lenders agreed to amend or waive their loan agreements
13 five times. And you heard Mr. Sussberg talk about that support
14 of the lenders, including by way of paving the way to provide
15 \$100 million in February, which allowed for the de-acceleration
16 of the loan that you heard about. This created some additional
17 liquidity to operate, but the company was hemorrhaging cash and
18 you heard about the two equity transactions.

19 Last week -- now I'm approaching into the DIP here --
20 the company approached 6th Street about providing DIP financing
21 for an orderly liquidation. At that point, the company's
22 financial situation was so dire they needed money just to get
23 into bankruptcy. You asked about when that loan was made. It
24 was a two-step process. The loan was funded one business day
25 ago, Friday at 9:15 in the morning.

1 THE COURT: Oh.

2 MR. HILLMAN: Now, I think it's clear. We had I'll
3 call it a pre-DIP rescue loan on Friday and here we are today,
4 \$54 million on Friday morning and here we are Monday, 3:15 with
5 another \$40 million. So the FILO lenders would have much
6 preferred to make a DIP today, not one on Friday and not one
7 today for 94, 95 million dollars. That wasn't an option.

8 The company needed the what I'm referring to as "the
9 rescue loans" to make some critical payments and the rescue
10 loan nominally was made by the ABL lenders. But because of the
11 over advance that you saw on the chart that was put up in
12 connection with the DIP, for all intents and purposes, it was
13 funded by 6th Street and the FILO lenders because their
14 recovery is last out.

15 So that was our economic stake that funded Friday.
16 So when you think about this, we didn't want to make a loan on
17 the eve of bankruptcy. We did it again to support the company
18 and so the second step of the process is the more traditional
19 piece of this DIP, the \$40 million.

20 So, look, we wish that there was a different outcome
21 and I'm going to walk through the DIP and I want to tackle the
22 questions that you asked Ms. Geier, so that there's no
23 ambiguity or confusion for Your Honor.

24 You asked about the funding of the reserves and you
25 got the numbers right. They're in the DIP order. It's in

1 paragraph 10. And they are funded, the priority reserve is
2 funded roughly \$900,000 a week from the proceeds of the
3 liquidation of the inventory.

4 THE COURT: Right.

5 MR. HILLMAN: And that's what the budget
6 contemplates. There's a cadence to the funding of the reserve.
7 All the reserves are funded in accordance with the budget.

8 You heard about the WARN reserve. I believe the
9 budget contemplates that that's funded next week and the other
10 reserve, the wind-down reserve, is filed later in the cadence
11 of the budget.

12 We talked about the roll up. And, again, I think
13 this is an important piece. We should look at the totality of
14 the economic context. And when you look at the totality of the
15 economic context, it's for all intents and purposes a \$95
16 million DIP with a \$200 million roll-up. And, yes, that is
17 contemplated to happen at the interim order.

18 So my job is to make sure that if there's any
19 ambiguity in your mind about the DIP or any of its terms, that
20 I'm here to answer them directly and concretely, so anything
21 that you have to ask, I want to be responsive.

22 THE COURT: Well, I mean I think that the question
23 people have is, you know, how that 200 million impacts the rest
24 of the stakeholders and how that changes things so that, you
25 know, obviously you or your client is not doing it

1 altruistically. It's a business and this is a tough situation
2 and I completely understand that, but I think that's where the
3 people might have questions.

4 MR. HILLMAN: Right. And so the roll-up was always
5 part of the economic consideration for doing the transactions
6 for providing yet another round of additional capital. And
7 importantly, the roll-up is subject to the challenge period and
8 that's specifically set forth in the order that's before Your
9 Honor. So I think that's the sort of safety net to deal with
10 this. It happens on the interim and it is an inextricable
11 component to the willingness to provide this company with yet
12 another round of additional capital, right?

13 We stepped up in August to provide financing. We
14 stepped up in February to provide another 100 million. Five
15 amendments in four months. We have provided stabilizing
16 capital in support for the company and to do it yet again, this
17 is simply the terms of the proposal holistically before the
18 Court and that the parties have been able to reach at the
19 negotiating table.

20 The other piece that I would mention, there's the
21 interest that I think you asked about on the roll-up. It's not
22 paid in cash. It PIKs. So that's another piece that provides
23 additional liquidity to the company.

24 THE COURT: Well --

25 MR. HILLMAN: Have I answered your questions?

1 THE COURT: -- that's --

2 MR. HILLMAN: Okay.

3 THE COURT: -- that --

4 MR. HILLMAN: I --

5 THE COURT: The PIK is a payment in kind?

6 MR. HILLMAN: Yeah. Yes.

7 THE COURT: Yeah.

8 MR. HILLMAN: So I appreciate you allowing me the
9 time to share our perspective and look forward to an
10 opportunity to be before Your Honor and to work with the other
11 stakeholders in the case. And any questions about this that
12 needs to be directed to me, I'm here and ready to answer those
13 questions.

14 THE COURT: Well, and here -- Mister -- I just want
15 to say. The FILO facility at -- is right, I guess, the
16 principal is 547 million. The ABL is 80 million ahead of it.
17 That's, like, 620 million. Between the two of them, as I
18 understand it, that is collateralized by maybe not every single
19 asset of the debtor's, but substantially all the assets of the
20 debtor's?

21 MR. HILLMAN: There are some assets that are not
22 currently encumbered, some property and some real estate.

23 THE COURT: That's not --

24 MR. HILLMAN: And I believe it's also when you
25 identify the litany of claims, I think there are also 100

1 million of letters of credit outstanding, as well.

2 THE COURT: Okay. All right. Thank you.

3 MR. HILLMAN: Thank you.

4 THE COURT: Thank you, sir. That was helpful.

5 MR. HUEBNER: Good afternoon, Your Honor. For the
6 record --

7 THE COURT: Good afternoon.

8 MR. HUEBNER: -- Marshall Huebner of Davis Polk on
9 behalf of JPMorgan as ABL agent.

10 I will take about two minutes. So --

11 THE COURT: Okay.

12 MR. HUEBNER: -- I'm well shorter than Mr. Hillman.

13 First, let me begin by noting that Mr. Sussberg's
14 lyrical and entirely appropriate opening was, in some ways, too
15 modest because he shared with this Court the aspiration that
16 people would be able to go with their wives and mothers to Bed
17 Bath for many decades to come, but yet he described himself, of
18 course, as a father --

19 THE COURT: Uh-huh.

20 MR. HUEBNER: -- and a husband who's done that. And
21 as someone took four girls to college and moved three of them
22 into apartments and two of them through pregnancy, I could echo
23 those stories of all the different Bed Baths in --

24 THE COURT: As I can.

25 MR. HUEBNER: -- in one's life. So I guess I'm in-

1 between the generations here since --

2 THE COURT: Yeah. Yeah.

3 MR. HUEBNER: -- I have grandchildren --

4 THE COURT: I'll give you that.

5 MR. HUEBNER: -- as well. So just a couple of other
6 quick things, Your Honor.

7 Number one, in terms of the support of the lenders,
8 and to be a little bit more precise about a couple of things,
9 there were actually five amendments in the last three months as
10 the debtors worked through trying to raise money. The ABL over
11 advance that was done last Friday with the consent of the FILO
12 lenders by the ABL lenders was \$54 million and closed late
13 morning. Your Honor, to be clear, as I think was ultimately
14 corrected, but let's say it once and say it right, there's \$83
15 million -- I think it's 82.8 -- of outstanding loans and about
16 102 million at LCs. Those are the ABL obligations. It's those
17 two things together. It's letters of credit, as well as the
18 borrowings.

19 Your Honor, Mr. Sussberg talked about a series of
20 firsts. I'm going to talk about a professional first certainly
21 for me and I have been doing this for a rather long time. The
22 deceleration of the ABL facility is something that in more than
23 30 years of practice I have never even not only not seen,
24 didn't even imagine was possible to get 100 percent syndicate
25 vote in a broadly syndicated ABL facility to put essentially

1 the debtor back in the ability to borrow.

2 The debtors use that ability intensely, as they were
3 supposed to and should have and did. Just so the Court is
4 aware, there were approximately 40 borrowings since the
5 February reinstatement essentially of the facility that totaled
6 \$757.528 million. So in addition to having access to segments
7 of the equity proceeds that were raised and the like, the re-
8 opening of the tap was another expression of support by the
9 lenders to let the debtors explore. As you have heard today,
10 they will continue to explore every possible available option
11 to figure out how to do the best they can by the many
12 stakeholders of this storied and, indeed, iconic brand.

13 Your Honor, the only other thing I would mention and
14 with that I'm done as I promised you -- I have very little to
15 say this morning -- is that the DIP order, while it's called
16 the DIP motion and the DIP order, as Ms. Geier pointed out near
17 the end of her presentation, also contains the adequate
18 protection package for the secured lenders. It's not, I think,
19 particularly analytically interesting. I don't imagine it's
20 going to draw much attention from anybody. We are an ABL
21 lender and that is an extremely safe facility that has a first
22 lien as the Court asked about and was answered. Not only a
23 blanket lien on virtually all assets, but in particular in a
24 retail case, a blanket lien on all current assets, right?

25 THE COURT: Uh-huh.

1 MR. HUEBNER: And so you're talking about inventory
2 and receivables and cash and securities and net equity and LCs.
3 And so ABLs are designed to be lost cost facilities because
4 they are very, very safe and they are very, very over secured
5 and so I don't imagine that we will be interesting to anybody
6 in this case. But should we end up interesting, obviously
7 we're here to explain not only what the ABL --

8 THE COURT: But --

9 MR. HUEBNER: -- lenders did but they're, I think,
10 quite extraordinary support of extraordinary efforts by a
11 company to figure out how to do the best that it can.

12 THE COURT: But between -- as I was saying before, -
13 between the ABL and the FILO, there's, you know, whatever,
14 seven-or-so hundred million that's out there. And that is --
15 but one way or another, however this all shook out in the
16 Chapter 11 reorganization or wherever we would be, that 700
17 million was secured by virtually everything except the real
18 estate and whatever else exceptions there are.

19 MR. HUEBNER: Yeah. And even the real estate, Your
20 Honor, it was some of the real estate that was outside and just
21 so the Court knows, today is certainly not the day for this
22 conversation. I don't think any day will be the day for this
23 conversation.

24 But so that the Court is aware, their presentation
25 referred to an over advance of \$193 million in February. I

1 actually believe the exact number was 198.33, but that's okay.
2 On that date, so the Court knows, there was approximately \$694
3 million outstanding. I believe that the collateral was very
4 comfortably double that, even at the lowest possible point.
5 When you add up all of the inventory, all of the receivables,
6 the debtors' own auction rate securities, they own extremely
7 valuable intellectual property, as you might imagine.

8 In many sort of, you know, precedent, iconic retailer
9 cases, Polaroid, Kodak, and the like, you know, the IP alone
10 fetched very, very substantial value. And so Your Honor is
11 correct. The current loan balance, you know, when you add our,
12 whatever it is, 185 to the 575-ish of the FILO, you measure
13 that against virtually the company's entire asset base, and
14 even back in February, I don't think there's any possible
15 question.

16 My memory is that the gross inventory alone was
17 assessed at 1.072 billion on the date of the over advance when
18 the borrowing base certificate was delivered and that's even
19 leaving aside hundreds of millions of dollars.

20 Again, please don't hold me to this. I'm doing this
21 from ancient, tired memory. I think the IP forced liquidation
22 value is really, like, 168. I mean there's just another 100
23 here and another 40 there and auction rate securities that were
24 actually monetized after the February over-advanced date for
25 tens of millions of dollars.

1 And so, yes, I think that, you know, we'd be
2 surprised if anyone did not share the view that there was over
3 collateralization to a very substantial degree at all points as
4 an ABL facility is designed to have.

5 THE COURT: Okay. Thank you, sir.

6 MR. HUEBNER: So unless there are further questions,
7 Your Honor, have a good afternoon.

8 THE COURT: Thank you.

9 Ms. Steele?

10 MS. STEELE: Thank you, Your Honor. Good afternoon.
11 Fran Steele on behalf of the U.S. Trustee.

12 Your Honor, as you're aware, the interim order that
13 was filed, and I'm showing Your Honor, is well over 100 pages.
14 Holding it up for you. And as you can imagine, the attorneys
15 involved had days, weeks, months to negotiate and look at this
16 order and we were given the order on Saturday, which we
17 appreciate receiving in advance, but the fact of the matter is,
18 is that the order was put on the docket yesterday, which gives
19 most parties in interest one day to review this order.

20 And the order contains various extraordinary
21 provisions including the roll-up. And the US Trustee worked
22 with counsel regarding many of the extraordinary provisions and
23 our changes were accepted and they're reflected in this order.

24 The remaining issue is the request for the roll-up
25 today one day after the case was filed. And we don't object to

1 the roll-up *per se*, Your Honor. We object to the timing. We
2 submit that the roll-up should not be granted on this first day
3 but, instead, should be on a second day hearing after a
4 Committee has had a chance to review. And we respectfully
5 inform the Court that the challenge period doesn't adequately
6 give the Committee a chance to totally review the roll-up.

7 And on that basis, the U.S. Trustee objects to the
8 roll-up and we ask Your Honor not to grant the roll-up today,
9 to push the roll-up provision to the second day hearing. And
10 in the event Your Honor does grant the roll-up today, then we
11 would ask that there be some provision in the order allowing
12 the Committee to actually review the roll-up provision and
13 unwind the provision should it be warranted.

14 THE COURT: Didn't we just hear from counsel that one
15 of the reasons that it's -- well, that it was critical, first
16 of all, that it was a key component of the deal and without it,
17 there would not have been a deal. But didn't we just hear from
18 them -- from -- I'm sorry. I don't remember which man it was
19 that --

20 MR. HILLMAN: Mr. Hillman.

21 THE COURT: Yes. So that it was -- the challenge to
22 that is allowed and it's preserved.

23 MS. STEELE: And does that challenge provide for the
24 unwinding of the roll-up should the Committee find that it's
25 not proper --

1 THE COURT: Well --

2 MS. STEELE: -- and not warranted or does it --

3 THE COURT: -- but --

4 MS. STEELE: -- just challenge the validity of the
5 liens?

6 THE COURT: Well, I mean, if you're challenging the
7 validity of the lien or you're challenging the roll-up or
8 whatever you're challenging, there's a pretty significant
9 person behind the counsel there and I mean, to me, that means
10 if it's -- the purpose of challenging it is to get it back, I
11 guess. I don't know what else it is.

12 MS. STEELE: If that's --

13 THE COURT: I don't know --

14 MS. STEELE: -- what Your Honor is saying, that that
15 challenge encompasses that, then the U.S. Trustee would accept
16 that representation and if that's in the order, then we would
17 not object today. But we just wanted to make sure, as Your
18 Honor knows, the Committee review is extremely important and we
19 want the Committee to be able to review these provisions.

20 THE COURT: Okay.

21 MR. HILLMAN: May I approach, Your Honor?

22 THE COURT: Absolutely.

23 MR. HILLMAN: Thank you, Your Honor. For the record,
24 David Hillman for the FILO agent and DIP agent. So paragraph 8
25 of the order says that upon entry of the interim order and

1 subject to paragraph 43, the roll-up occurs. Paragraph 43 is
2 the so-called challenge period.

3 So the issue is the challenge period is, I would say,
4 plain vanilla, garden variety things that a party with standing
5 can challenge and it is lien priority. It is validity. If
6 there's something defective with the debt that's rolled up,
7 there is a remedy.

8 But I think what we're hearing from the U.S. Trustee
9 is something different. The U.S. Trustee wants to preserve the
10 ability for someone to come back here at the final order and
11 say, don't roll up valid debt or roll-up less valid debt. That
12 is foreclosed. That decision -- and this is a point that I
13 don't think I made before that I think is worth emphasizing.
14 The \$40 million DIP is a single-draw term loan. It's out the
15 door tomorrow. It's out the -- maybe even out the door today.
16 Okay.

17 THE COURT: Yes.

18 MR. HILLMAN: So if we're going to provide the
19 benefit of our bargain, then the panoply of rights that we're
20 expecting can't be yanked back from us after we've provided
21 that capital.

22 Now, the safety net is what the Court has seen in
23 innumerable cases before you of a challenge period, but it is
24 not the freedom to come back and simply undo the roll-up unless
25 they bring a challenge. The challenge is, among other things,

1 the validity and priority of a debt and there's a long list of
2 the things typical, right down the middle of the fairway,
3 challenge period.

4 The relief that the U.S. Trustee, with all due
5 respect, is asking for is far broader and effectively would
6 require the Court to deny the roll-up. And I think I have been
7 clear on this, and the debtors can supplement this point, there
8 is no possibility of doing the \$40 million financing without
9 the roll-up.

10 They are intrinsically linked and it's subject to the
11 challenge period. And I think that is the protection that
12 could give the Court comfort to know that if someone seeks to
13 challenge the rolled-up debt for any one of the reasons in the
14 paragraph 43, they have the ability to do so.

15 THE COURT: Well, and isn't that the way it always
16 goes? I mean that's the way it is. It's if you challenge it,
17 the challenge doesn't happen in one minute. It happen --
18 there's an adversary proceeding or a motion or something filed
19 and my guess is -- I don't know, maybe I'm going out on a
20 limb -- I would say a challenge would be vigorously defended.

21 So I think the issue about taking it -- you know,
22 taking it back or immediately or -- I don't know. It sounds
23 like a disgorgement or forfeiture you're talking about. That's
24 not my understanding of a challenge. So that -- I was -- and
25 even to Ms. Steele's comment and, I guess, objection is that

1 the Creditors' Committee is going to be appointed, what, in
2 about a week?

3 MS. STEELE: Yes, Your Honor.

4 THE COURT: Right. And they're going to get on this
5 right away. They're going to get on it immediately, like
6 happens in every case when there's this kind of thing at stake,
7 and if they have an issue, they'll let you know about it and
8 you'll see what it is and if they, you know, want to challenge
9 it, they'll challenge it.

10 But they have to challenge it in accordance with due
11 process and all those things and it'll be a -- probably a
12 contested matter one way or another that would allow,
13 ultimately, for that money to come back --

14 MR. HILLMAN: And I think --

15 THE COURT: -- but only after you win --

16 MR. HILLMAN: -- and I --

17 THE COURT: Well, not you. But, you know, the -- but
18 after the Committee wins or whoever has standing wins.

19 MR. HILLMAN: And I appreciate Your Honor's color and
20 I think what we're saying is the same thing. That is, the
21 unwind is not the remedy at the final order. It is the ability
22 to bring a successful challenge under paragraph 43 of the DIP
23 order to the debt, not to the roll-up. And if there's an issue
24 with the debt as a result of a successful challenge, then
25 there's an ability to deal with that.

1 THE COURT: Well, and then they're also saying the
2 priority and validity. I think they're saying --

3 MR. HILLMAN: Oh, yes, yes. I'm sorry.

4 THE COURT: Yeah.

5 MR. HILLMAN: Yes. But not --

6 THE COURT: But --

7 MR. HILLMAN: -- not the roll --

8 THE COURT: -- not just the debt.

9 MR. HILLMAN: Not the roll-up. The roll-up is a
10 today issue. The roll-up cannot be undone by simply raising an
11 objection at the final hearing in 30 days. There is a path
12 under paragraph 43 to bring a challenge.

13 THE COURT: Um-hum. But 40 million is not coming in
14 otherwise, is what I'm hearing. Okay.

15 MS. STEELE: And I understand that, Your Honor, and
16 with those representations that the Court stated regarding the
17 challenge and the ability of the Creditor's Committee, the U.S.
18 Trustee will withdraw its objection.

19 THE COURT: Oh, okay. Well, that's -- I'm glad to
20 hear it. And I don't think I said anything different than
21 what's in there, so --

22 MS. STEELE: Oh, you clarified, Your Honor.

23 THE COURT: I --

24 MR. HILLMAN: Yeah.

25 THE COURT: Color.

1 MR. HILLMAN: Because the color and clarification is
2 so critical to the DIP lender's perspective, I think it would
3 be important for me to unequivocally state that once the Court
4 enters the DIP order, the roll-up cannot be reviewed at the
5 final order. The remedy for a Creditor's Committee or a party
6 with interest withstanding is to bring a challenge under
7 paragraph 43 of the DIP order. Is that your understanding --

8 THE COURT: You could --

9 MR. HILLMAN: -- Your Honor?

10 THE COURT: That could not be clearer and I
11 appreciate the candor and directness.

12 MR. HILLMAN: Thank you.

13 THE COURT: Ms. Geier?

14 MS. GEIER: Your Honor, I think we heard that the
15 United States Trustee's objection was withdrawn. So we are
16 now --

17 THE COURT: I heard that.

18 MS. GEIER: -- fully consensual.

19 (Laughter.)

20 MS. GEIER: I'm not sure who accomplished it, but --

21 THE COURT: So you have nothing --

22 MS. GEIER: -- here we are.

23 THE COURT: -- to address right now?

24 MS. GEIER: So --

25 THE COURT: Is that it or that -- or you still have

1 something to address?

2 MS. GEIER: No, Your Honor. I came --

3 THE COURT: Oh.

4 MS. GEIER: -- back to the podium because I was
5 hoping to seek your approval and also, you know, just to get on
6 with the other items that we have after it because --

7 THE COURT: Yeah. Yeah.

8 MS. GEIER: -- we do have a busy day.

9 THE COURT: And I just want to say that then, before
10 you start, Ms. Geier, is that I did review the papers and the
11 debtors are represented by some of the most sophisticated,
12 knowledgeable, experienced professionals, not just legally but
13 financially and business-wise in every way.

14 And if there was one thing that came through from the
15 papers, and even this last presentation, is that this 40 -- two
16 crystal clear things. This 40 million was not coming unless
17 they got the protections in the order and in the roll-up, as an
18 example, and without the 40 million, this iconic brand was
19 probably going to go into a fire sale unorganized, very valued
20 depreciating liquidation immediately.

21 And, you know, business judgment, the business
22 judgment in this case is far beyond me and I can't question the
23 recommendations and advice of all these extremely knowledgeable
24 professionals. It was -- it's something that needed to be
25 done. The only way it could be done and is the only way that's

1 going to give everyone on that Bed Bath & Beyond side the
2 chance to make another thing happen that people didn't think
3 could happen. And I hope that's the way it goes, but either
4 way, there's a pathway to do it in an organized way without the
5 facilities that we have here. That pathway was burning and I'm
6 -- and I don't think that's the proper result. So I'll approve
7 the DIP financing order.

8 MS. GEIER: Thank you, Your Honor.

9 MR. MAYR: Your Honor --

10 THE COURT: Oh.

11 MR. MAYR: May I be heard?

12 THE COURT: I'm sorry.

13 MR. MAYR: Yeah.

14 THE COURT: Who is that?

15 MR. MAYR: This is --

16 THE COURT: Mr. Mayr?

17 MR. MAYR: Yeah. This is Mayr, Glenn Agre --

18 THE COURT: There's a --

19 MR. MAYR: Bergman and Fuentes.

20 THE COURT: There's -- I'm on -- something happened
21 on my screen here.

22 Okay. Go ahead, sir.

23 MR. MAYR: Can you hear me okay?

24 THE COURT: Yes. Yeah.

25 MR. MAYR: Great.

1 THE COURT: I just couldn't --

2 MR. MAYR: Thank you.

3 THE COURT: -- see you.

4 MR. MAYR: Thank you. It's hard when you're not in
5 the courtroom and I guess I'll start thank you for indulging me
6 today to participate remotely. I just couldn't physically get
7 there from Connecticut in time today. And I also want to say
8 it's nice to see Mr. Sussberg without the full arm sling on
9 that he had last week in court. He looks like he's -- oh, it's
10 there.

11 THE COURT: Oh. It's still --

12 MS. GEIER: He still has it.

13 THE COURT: It's still here. It's still --

14 MR. MAYR: He --

15 THE COURT: -- here, but he --

16 MR. MAYR: He was wearing at the -- but he was
17 wearing at the podium last week. So there's some --

18 THE COURT: Yeah.

19 MR. MAYR: -- improvement. Uh-huh.

20 THE COURT: That was --

21 MR. SUSSBERG: Progress.

22 THE COURT: He showed it to me, though.

23 MR. MAYR: You know, as I mentioned, we represent a
24 number of investment funds and institutional investors who own
25 the unsecured bonds of the company. The unsecured bonds are,

1 as you have seen today, you know, a billion dollars and the
2 largest part of -- the largest segment of the company's
3 financed debt.

4 We're here to, you know -- we want to work
5 collaboratively with the debtor. We want to maximize value.
6 We want to be, you know, constructive to get to a resolution
7 that works for all stakeholders.

8 We do have some concerns about the process, as you
9 would imagine, but -- and primarily, you know, with respect to
10 the cost and the timing of the process, we don't want a rushed
11 process that's serving only the secured lender's agenda. I'm
12 not saying that's the case now, but it is something that we
13 want to discuss with the debtors in terms of where they've been
14 and how they want to get to where they want to go.

15 We also did want to -- no objections today on an
16 interim basis obviously given that you've already ruled, as
17 well, but we do want -- you know, we do reserve rights to the
18 final hearing. Particular would note that, you know, we may
19 have issue with a certain incremental collateral or liens on
20 avoidance actions going to the DIP.

21 But at the end of the day, our clients, like you've
22 heard today, believe in this iconic brand and, in particular,
23 the valuable asset in buybuy BABY, value NOLs and various other
24 pockets of value that we've heard Mr. Huebner speak to today
25 that we hope will lead to distributions well beyond the secured

1 creditors in this case.

2 So, you know, we look forward to working with the
3 Court and the debtors' representatives to find the best
4 possible outcome here for the states and their stakeholders and
5 we reserve our rights for the final hearing.

6 THE COURT: All rights reserved. And I -- and if
7 past is prolonged, Mr. Mayr, you know, the -- it seems like
8 there's been a lot of hard fought, but good faith negotiations
9 between the parties that allowed things to happen, you know,
10 when things didn't seem like they could happen, when deadlines
11 were passing, and my hope is that it continues going forward.
12 And it's not just my hope, it's my belief that that's the way
13 things will go.

14 MR. MAYR: Share your hope. Thank you.

15 THE COURT: So thank you, sir. All right. So no --
16 there's still no objections, Ms. Geier.

17 MS. GEIER: Thank you, Your Honor. I thought I was
18 going to have to invoke the enshrined courtroom rule of no
19 take-backs.

20 (Laughter.)

21 MS. GEIER: But I'm glad that we did not reach that.

22 Your Honor, if we have closed the DIP chapter, I
23 might move toward the next item on the agenda, which is the
24 bidding procedures motion.

25 THE COURT: Okay. Let's go. Bidding procedures.

1 MS. GEIER: Bidding procedures.

2 THE COURT: Oh, there's a --

3 MS. GEIER: And just one --

4 THE COURT: I'm being handed a revised order.

5 MS. GEIER: That's correct, Your Honor. You are.

6 You're being handed a revised order that has been submitted to
7 chambers. It is not on file yet, to my knowledge, but we
8 wanted Your Honor to have what is the fully agreed form of
9 order in your hands while we went through it.

10 But just to take a step back for one moment, the
11 original motion was filed at Docket Number 29. It contained
12 all of the documents, so you didn't have to go hunting through
13 the rest of the docket for the declarations and such. But what
14 you'll see in Mister -- in the Lazard declaration and
15 Mr. Kurtz's declaration is a long process that has been ongoing
16 for some time seeking for strategic investors, going-concern
17 buyers. There was financing searches in there, as well.

18 So really where we are now is the continuation of
19 that six-month process, except now we get to do it on a
20 national stage. We get to do it with everyone aware that Bed
21 Bath & Beyond and buybuy BABY are for sale. They're available
22 to the highest bidder and we want those bidders to come forward
23 and we are prepared to work with them as quickly as we need to,
24 to document that transaction in whatever form it takes.

25 So obviously we are looking for, first and foremost,

1 a going-concern buyer for this company. We want -- we have not
2 only an iconic brand to protect, but we also have 14,000
3 employees that we want to be able to keep as many of those jobs
4 intact as possible.

5 That's it. I, you know, share everyone's experiences
6 with Bed Bath and I want to be able to take my daughter college
7 shopping there, too. I want to take my sons there college
8 shopping if we're fortunate enough for them to make it to
9 college. The daughter definitely. We'll see about the boys.

10 (Laughter.)

11 THE COURT: I hold out hope there, too.

12 MS. GEIER: And so to the extent --

13 MR. HUEBNER: Your Honor, I'm counsel to her son and
14 I object.

15 (Laughter.)

16 MS. GEIER: I knew that he would retain excellent
17 counsel, so that is concerning for my future then.

18 So on this, there are a lot of documents attached
19 here and there's a full suite of there are stalking horse
20 bidding protections. You know, there's a form APA. There's
21 the form and notice of auctions. There are notice of
22 procedures for the assumption and assignment of those contracts
23 and leases attached should we find that going-concern buyer.

24 That's because we cannot afford delay in having all
25 of that in place should someone come knocking on our door. So

1 we want to make sure that those items are in place and we have
2 very specific milestones to meet and, you know, if it's not
3 going-concern buyer, then maybe it's these iconic brands. And
4 certainly these iconic brands have a lot of value and will
5 continue to this day.

6 You know, we know that brands like Toys 'R Us,
7 they -- the actual stores didn't make it through the
8 restructuring process, but the name did and so it's now
9 reviving and that's, at the very least, the story we want to be
10 able to tell here for Bed Bath & Beyond and buybuy BABY.

11 So with that, Your Honor, the -- I think the most
12 important aspects of this are the tight timeline. So we would
13 have an auction. We have a bid deadline of May 28th. If a
14 party wants to serve as our stalking horse bidder, that's
15 May 22nd, so not a lot of time from now. Those are dictated by
16 the DIP required milestones, so these are not flexible end
17 dates, although we do have built in flexibility in the motion
18 to move dates around. At the end of the day, our DIP budget --
19 our DIP order says what it says and we have to have that sale
20 hearing and order approved on June 7th in order to get that
21 approved.

22 We have added in a couple of extra dates into the
23 schedule, so adequate assurance packages need to be delivered
24 by May 29th, which is the day after the bid deadline to ensure
25 that landlords have adequate time to review those packages.

1 We have moved the objection deadline to two days
2 before the sale hearing to June 5th instead of June -- so
3 June 7th would be the sale hearing, June 5th being the
4 objection deadline. So we are -- we have made a few changes
5 around the edges, but the absolute dates have not changed,
6 which is that June 7th end date. That's 45 days from the
7 petition date under the DIP milestones and we will use every
8 bit of that time to ensure that we get the best value possible
9 for the company and/or its brands.

10 One thing I do want to flag is that this motion does
11 not cover one-off lease sale -- you know, one-off lease
12 assumption assignments, one-off lease termination agreements.
13 Those will be pursuant to a separate motion that we are getting
14 on file as soon as humanly possible.

15 And so you won't see that in these documents but just
16 going to point out those are not covered here.

17 THE COURT: Those are things that are percolating or
18 that those are things that are -- that you're talking about
19 now --

20 MS. GEIER: Exactly.

21 THE COURT: -- the one-offs?

22 MS. GEIER: Exactly. You know, we do have A&G Realty
23 as the sort of the restructuring real estate advisors involved
24 in this process, as well. So they're out there soliciting and
25 looking for potential parties that may be interested in an

1 assumption and assignment of certain leases or with particular
2 landlords may want to enter into those individual termination
3 agreements as we exit the stores over time through the going-
4 out-of-business sales.

5 But for right now, you know, this is our main primary
6 absolute focus, but we will be doing that sort of
7 simultaneously to ensure that we have maximized all value and
8 resources that we have to monetize.

9 So there are a couple of declarations attached to
10 this motion that I just want to flag all together at Docket
11 Number 29. So I just want to ensure that those get into the
12 record. There is the Lazard declaration. Mr. Kurtz also
13 served as declarant for this motion, as well as Elise Frejka.
14 She is the party that reviewed the consumer data privacy
15 provisions to sort of get out in front of any concerns where we
16 have -- if we have consumer data involved here.

17 It's her review of the policy that just says we're
18 not asking for relief around it. We're just -- it merely says
19 a consumer privacy omnibus likely is not required here simply
20 because we have done all this review and, in her opinion --
21 she's done this in many, many cases -- in her opinion, this
22 data and what the bounds would be to make it part of a sale
23 process is sort of laid out in there and why we don't really
24 need a consumer privacy omnibus here.

25 THE COURT: I'm sure the U.S. --

1 MS. STEELE: I --

2 THE COURT: -- Trustee will --

3 MS. STEELE: Yes, Your Honor. We preliminarily
4 reviewed the privacy policy and we have had some preliminary
5 discussions and we don't believe that a privacy ombudsman will
6 be necessary based on the specific language that allows the
7 company to enter into a sale and give the information to the
8 perspective purchaser.

9 So as we stand today, we don't believe that we need
10 one.

11 THE COURT: Okay. Thank you, Ms. Steele. Thank you.

12 MS. GEIER: So with that, Your Honor, I do have the
13 redlines in front of me if there are any specific questions
14 that you have or would like to go over. I'm happy --

15 THE COURT: The --

16 MS. STEELE: -- to do so.

17 THE COURT: The bid protections, the expense
18 reimbursement and the break-up fee --

19 MS. STEELE: That's right.

20 THE COURT: -- the way I understand it is that that
21 is also going to be the subject of negotiation and back and
22 forth as to the stalking horse. And then the -- because this
23 is a little bit of an unusual situation how that works going
24 forward in terms of the substantiation of the fee.

25 MS. STEELE: Yes, Your Honor. There are bid

1 protections requested in this motion order. The reason why
2 they're requested here, as opposed to at a sale hearing, is
3 simply because we don't have much time in the schedule to come
4 back and see if we can get that.

5 If a going-concern buyer comes forward and they have
6 put together a package that says, you know, this is going to be
7 a fantastic stalking horse bidder or I -- not just going
8 concern, but any package that we think is -- should serve as a
9 stalking horse bidder, we don't want to disrupt that process by
10 coming back. So we have requested a reasonable -- what we
11 think are reasonable bid protections, but we will continue to
12 negotiate those. We are not automatically handing those out,
13 by any means.

14 THE COURT: Okay. And then by then they'll be a
15 committee, I think, and they'll maybe chime in, as well.
16 They're a consultation party, right?

17 MS. GEIER: Yes. Absolutely, Your Honor. And they
18 have the -- that was one of the points requested by the United
19 States Trustee was to make sure that the Committee, when
20 appointed, would be a consultation party and have all of the
21 same notice rights involvement and so they have been
22 incorporated, as well. So yes.

23 THE COURT: Great. All right. I obviously have
24 not -- I think it is on the docket at -- looks like at 3:24
25 today it got on the docket.

1 MS. GEIER: Fantastic.

2 THE COURT: So --

3 MS. GEIER: Fantastic news.

4 THE COURT: -- you have got quite the team going on
5 back there.

6 MS. GEIER: I know. I told you. I went back to my
7 back to my desk for one second, submitted it, came back. It's
8 very quick.

9 THE COURT: All right. But I obviously haven't had a
10 chance to review it, but -- and I don't know if you -- were
11 most of these comments from the U.S. Trustee or --

12 MS. GEIER: That's correct, Your Honor. So majority
13 of the United States Trustee and also a couple of landlord
14 tweaks, just around the timeline in particular. The United
15 States Trustee made sure that the Committee was involved as a
16 noticed party throughout. Those were the key -- sort of key
17 points.

18 THE COURT: All right. So it maybe just -- as long
19 as those parties have it and you represent to me that they have
20 signed off on, you know, the changes that you -- sounds like
21 you have agreed to already, then, again, it's a different --
22 and I'm not going to say just completely unique, but it's a
23 different situation because you've had -- it looks like you
24 have had a semi-wind down process going on for quite some time
25 and a sale process, in a sense, going on for a long time and

1 there isn't a long timeline on the -- on trying to get it done.

2 So I think these are the circumstances in which you
3 have to make adjustments and not have the usual procedure,
4 because the usual procedure just doesn't really fit this time.
5 And I appreciate that you worked with the U.S. Trustee's Office
6 and the landlords in getting it done, so I'm sure I'm fine --
7 I'm sure I'm going to be fine with it, okay? I just --

8 MS. GEIER: Thank you very much.

9 THE COURT: I don't want to keep everybody here while
10 I flip through the redline. I don't --

11 MS. GEIER: Yes. And apologies for submitting it on
12 the docket so later in the day. We try to make it so that
13 everyone can get their comments in and get heard and I think,
14 at least, everyone could represent if necessary, that they are
15 signed off. I think we do have landlord representation in the
16 courtroom today. If you'd like to hear from them --

17 THE COURT: Yeah. That'll be fine. And you know
18 what? We didn't do that with the DIP order. Is that in final
19 form?

20 MS. GEIER: Yes, Your Honor.

21 THE COURT: It is in final form?

22 MS. GEIER: Yes. That was the submitted final order.

23 THE COURT: Okay.

24 MS. GEIER: Final form of interim order.

25 THE COURT: Okay. Great.

1 Come on up.

2 MR. HAIG: Good afternoon, Your Honor. Robert Lee
3 Haig, Kelley, Drye & Warren.

4 Your Honor, we represent approximately 16 landlords
5 at over 80 locations at this point, including Oak Street
6 Capital, the headquarter's landlord, 11 other locations, site
7 centers, Kite Realty Group, Brookfield, a number of other
8 landlords, Your Honor.

9 Your Honor, these procedures are far from perfect and
10 they certainly are unusual, but we absolutely understand the
11 situation the company's in. We can't promise you that we won't
12 need some of your help if it does turn out that there is a
13 going-concern buyer and there's adequate assurance issues and
14 we need some time to assess those.

15 But with the changes that debtors' counsel was
16 willing to make, and the lenders -- and we understand there's a
17 big team and there's a lot going on -- it's a very tight,
18 compressed process, Your Honor. And even with the adjustments
19 that they have made, it may be very difficult for our clients
20 to get the information, adequate insurance information, assess
21 it and know whether or not they have to object. But given the
22 reality to the situation and the movements that were made, you
23 know, we're willing to move forward with this process, and
24 specifically under the understanding that this is for a going-
25 concern bid, something that may save the company. And at the

1 process, we're doing one-off lease assignments, et cetera. It
2 would be subject to a separate set of procedures.

3 THE COURT: That's -- yeah.

4 MR. HAIG: So we really appreciate the work of the
5 debtors' counsel, the debtors' team and everybody else involved
6 in getting back to us quickly and promptly. It's certainly far
7 from perfect, Your Honor, but at this point, we were signed
8 off. I also --

9 THE COURT: Well, that --

10 MR. HAIG: -- worked in coordination with Leslie --
11 I'm sorry -- Laurel Roglen from Ballard Spahr, Scott Fleischer
12 from Damon Barclay. They're also here. They can get up if
13 needed, but they were also involved in the process and we
14 certainly appreciate their help in helping us get comments to
15 counsel for the debtors and great response from the Kirkland
16 and the Cole Schotz teams, Your Honor.

17 THE COURT: Well, I'm glad to hear that. I'm not
18 surprised to hear it, but I'm glad you're here and I appreciate
19 your working with those things and I'm certainly here to help
20 where I can. I try to be reasonable and I try to be -- give
21 people a fair shot at doing what they need to do and having
22 enough time to do what they need to do with regard working with
23 a compressed time frame here.

24 And the way I'm seeing this, sir, is in a way this is
25 setting up some guidelines for sales that are to be determined

1 that are -- that's not even really here yet. It's almost like
2 the motion is going to be when the actual bids come in and
3 people and it comes before the Court and you reserve your
4 rights. Everybody reserves their rights and we'll deal with it
5 as best we can.

6 MR. HAIG: Thank you, Your Honor. Happy to answer
7 any other questions you may have.

8 THE COURT: No, no. I have no more questions.
9 That's good. Thank you --

10 MR. HAIG: Thank you very much.

11 THE COURT: -- sir. I appreciate it.

12 MS. STEELE: Yes, Your Honor. Fran Steele on behalf
13 of the U.S. Trustee.

14 As counsel said, we did provide comments. We asked
15 for certain provisions to be incorporated, which they were,
16 certain deleted. And so based on that, we have no objection to
17 the form of order, Your Honor.

18 THE COURT: Great. Does anyone else wish to be
19 heard?

20 (No audible response.)

21 THE COURT: Okay. Having heard no response about the
22 bid procedures order as revised will also -- is also approved.

23 MS. GEIER: Thank you very much, Your Honor. I
24 appreciate your time today. I'm going to cede the podium to my
25 partner, Derek Hunter.

1 THE COURT: Okay. Thank you.

2 MR. HUNTER: Good afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MR. HUNTER: Derek Hunter from Kirkland & Ellis on
5 behalf of the debtors. I'll see if I can't pick up the pace of
6 the agenda items a little bit here.

7 THE COURT: Are you saying it was slow before or was
8 it me?

9 MR. HUNTER: No, no, no. Hopefully these are less
10 controversial.

11 THE COURT: All right.

12 MR. HUNTER: The next one being the cash management
13 motion. That's agenda item 3 at Docket Number 18, Your Honor.

14 THE COURT: Yep.

15 MR. HUNTER: By this motion, we're seeking to
16 continue to operate our cash management system in the ordinary
17 course. It looks a lot like a cash management system you have
18 probably seen in other retail cases, store level deposit
19 accounts, there are collection accounts. They're swept daily
20 and we have 14 disbursement accounts.

21 We also make inter-company transfers in the ordinary
22 course. We're not seeking to make intercompany transfers to
23 any non-debtors during the cases. We pay standard bank fees
24 and processing fees and the like.

25 We don't have a redline to hand up. The U.S.

1 Trustee's Office has been great working late and over the
2 weekend and so all -- you know, their comments are already
3 incorporated. They may have statements they want on 345(b), I
4 understand, but the changes are in the order as I understand
5 it.

6 On the business forms, we're going to print the DIP
7 label on new checks, but otherwise exhaust existing checks.
8 And then on 345(b), we have agreed to a 30-day extension or
9 suspension of that requirement and we'll work through it with
10 the U.S. Trustee and we'll try to work something out, I think,
11 by the time of the final order for that issue.

12 THE COURT: On the normal course, the U.S. Trustee's
13 Office asked for the DIP to -- designation to be on the
14 accounts, but maybe --

15 MS. STEELE: Right. We did agree with that, Your
16 Honor.

17 THE COURT: Yeah. So -- and really, everyone knows
18 that Bed Bath & Beyond is a DIP at this point. So maybe not a
19 DIP --

20 MR. HUNTER: Yeah.

21 THE COURT: -- but a debtor.

22 MR. HUNTER: Yes. I think that theme will come up a
23 little bit later, Your Honor.

24 I would -- I think Ms. Etlin would chastise me if I
25 did not reiterate that payroll is this week and so it's

1 critical we get access to our bank accounts opened up. And so
2 cash management here and wages next, obviously critical for us
3 to be able to, you know, make payroll this week as we expect
4 to.

5 THE COURT: All right.

6 MS. STEELE: Yeah. Yeah.

7 MR. HUNTER: Yeah. I'll cede at the moment --

8 MS. STEELE: Thank you.

9 MR. HUNTER: -- at the podium.

10 MS. STEELE: If Your Honor would just indulge me just
11 a moment, we have no objection to the cash management order.
12 We resolved our objection with the debtor. The order provides
13 for a limited waiver of Section 345 providing for a 30-day
14 review by the U.S. Trustee.

15 And recent bank failures highlight the importance of
16 the debtors' compliance with Section 345 for the benefit of all
17 the stakeholders. And as Your Honor is aware, Section 345
18 places an obligation on the debtor-in-possession to require
19 protections for its monies from institutions which hold such
20 monies. And the U.S. Trustee, in its advisory role, assists
21 with this protection by its entry into uniform depository
22 agreements. Those are UDAs, which obligate the depository to
23 maintain collateral of deposits, which exceeds the FDIC limits.

24 And here, as a result of the importance of
25 protections of the debtors' funds and the requirements of

1 Section 345, the order does provide a limited waiver of Section
2 345 and an opportunity for the U.S. Trustee to review.

3 So, Your Honor, we're hopeful that the debtors will
4 act promptly to ensure full compliance with Section 345 and we
5 reserve our right to be heard at the final hearing.

6 THE COURT: Okay.

7 MS. STEELE: Thank you.

8 THE COURT: Well, and again, I appreciate you working
9 together with the debtor and counsel to get it done.

10 MS. STEELE: Thank you, Your Honor.

11 THE COURT: Thank you. Thank you, Ms. Steele.

12 All right. And I have reviewed that order, you know.
13 I can't say I read every single word in there because that
14 wouldn't --

15 MR. HUNTER: Understood.

16 THE COURT: -- be true. But I tried to read as much
17 as I could. And there's a lot of words again, but it doesn't
18 seem like it's anything unusual or inappropriate, so I'll
19 approve the order especially with the consent of the United
20 States Trustee's Office.

21 MS. STEELE: Thank you, Your Honor.

22 MR. HUNTER: Thank you, Your Honor.

23 THE COURT: All right.

24 MR. HUNTER: Next item on the agenda is our wages
25 motion, item number 4, at Docket Number 11. Again, another one

1 where we shared with the U.S. Trustee and worked through their
2 issues in advance. This is a standard wages motion, Your
3 Honor, seeking to pay ordinary course amounts, amounts that
4 could come due post-petition, as well.

5 We have 14,000 employees, as we have talked about.
6 Over 12,000 of those are store level employees. They're
7 hearing a lot in the news and it's critical to be able to
8 reinforce that, you know, they're going to get paid for their
9 work, you know, post-Chapter 11 filing. I'm happy to -- and I
10 would flag no amounts above the statutory cap. We're not
11 seeking relief for that. There's nothing that implicates
12 503(c) here, so we think it's a --

13 THE COURT: Even after the final order no amount?

14 MR. HUNTER: We don't expect there to be any amounts.
15 I will come back to you if there is, but we don't expect there
16 to be even on a final basis, but certainly not today.

17 THE COURT: But to -- right. So there's really two
18 questions I had was -- one was whether, on the final order
19 basis, you're looking for in excess of the 507 caps and you
20 just you may be. Is that --

21 MR. HUNTER: We do not expect to.

22 THE COURT: But you -- yeah.

23 MR. HUNTER: But yes.

24 THE COURT: Yeah. And the second one was whether --
25 I'm just not 100 percent clear on it, but whether you're also

1 seeking to pay expenses -- amounts that were due before the
2 period or that even are, you know, maybe several months old and
3 for --

4 MR. HUNTER: No. Well, generally, Your Honor, we're
5 seeking to continue ordinary course so, you know, we --

6 THE COURT: Just ordinary course.

7 MR. HUNTER: Exactly. Exactly.

8 THE COURT: Okay. All right. That's what I wanted
9 to know. Thank you.

10 MR. HUNTER: Great. And unless you have any further
11 questions or anyone in the courtroom, we ask that enter the
12 wages order.

13 THE COURT: All right. That is also approved.

14 MR. HUNTER: Thank you.

15 THE COURT: Thank you.

16 MR. HUNTER: Moving along. Next one is the store
17 closing motion. That's at item number 5, Docket 28.

18 As you heard from my colleagues, Mr. Sussberg and
19 Ms. Geier, you know, while we're continuing to market our
20 business, we do intend to immediately commence liquidating our
21 stores. You know, in our business judgment, we do need to
22 begin that process in an effort to maximize value. So this
23 really is critical, Your Honor. You know, I do think it looks
24 like other store closing motions you may have seen in the past.
25 We're seeking to assume a consulting agreement with Hilco and

1 others.

2 We're seeking to close, you know -- begin the process
3 for all of our stores. It's wave five of our closing process,
4 which I think you heard has been going on for some time now out
5 of court, and we're seeking authority to pay customary bonuses
6 to our store level employees to complete the process in making
7 modifications to our customer programs.

8 This is one that typically the landlord bar care
9 about. In particular, they reached out soon after the order
10 was filed. Again, they were great working with us getting us
11 comments last night hours after the motion was filed. We have
12 worked through that and I think we have resolution on their
13 issues through some new language in the orders, which I don't
14 believe you have, but I can hand up in a second if you'd like
15 to flip through.

16 Before I do, just two things that I would -- I
17 promised certain counsel I'd say on the record. One is that,
18 you know, the -- it is important to certain landlords' counsel
19 that we work through side letters with their particular
20 landlord --

21 THE COURT: Uh-huh.

22 MR. HUNTER: -- to govern the GOB process. We have,
23 you know, obviously no issues with that and, you know, we're
24 going to start that process expeditiously and we plan to work
25 through it in good faith with them.

1 It's typically not something you can get done in a
2 day and so, you know, they don't have us a certain that's
3 necessarily locked in now, but they're willing to support the
4 interim orders, I understand, based on the representation that
5 we'll work with them quickly and in good faith to get the side
6 letters for those that want it.

7 And second, Your Honor, there is a provision in the
8 interim order that requires certain parties to surrender
9 property if it is property of the debtors. I think that's
10 standard in these types of orders. But, you know, of course
11 there could be a debate about is it -- you know, what is the
12 debtors in property, does the landlord think they have an
13 interest in property. I think, you know, the landlords, their
14 rights are reserved on that front. If they find that there's
15 some issue there, they can come back to you on it.

16 So I just want to make those couple statements on the
17 record. I do have a redline. If I may approach, I can give it
18 to Your Honor.

19 THE COURT: Okay. Yep. Thank you.

20 So, Ms. Steele, this is -- this reflects your
21 comments, as well?

22 MS. STEELE: It does, Your Honor, except I do have
23 one comment that I'd like to put on the record, one objection.

24 THE COURT: Uh-huh.

25 MS. STEELE: But other than that, it does reflect all

1 of our comments.

2 THE COURT: Okay.

3 MR. HUNTER: And so what I'd suggest is that I don't
4 believe it's really a language issue, so I'm happy to answer
5 questions but I'd let Ms. Steele kind of, you know, talk about
6 what her issue is and then I'm happy to address it.

7 MS. STEELE: Thank you. Fran Steele on behalf of the
8 U.S. Trustee.

9 Your Honor, our only objection is that the order
10 provides that you have 30 days to return goods to the stores,
11 but only 14 days to use your gift card and we would suggest to
12 the Court that those days should be the same, that the gift
13 card should be extended to the 30 days as when you can return
14 something because it seems unfair to the consumer to go into
15 the store on day 16 to return something and have in their
16 pocket a gift card only to get to the register to find out that
17 they can return something, but that they can't use the gift
18 card, and we would suggest that it's just more practical for
19 those days to be the same. And based on that, we would object
20 to that provision.

21 THE COURT: all right. I understand. I understand
22 what you're saying, but isn't -- I guess two things. Isn't
23 that kind of classic business judgment and also isn't that
24 classic business judgement as to whether they might think it's
25 better to get somebody in the store with a gift card that -- so

1 they go buy other things, like they used to do, and extend that
2 period?

3 MS. STEELE: I agree --

4 THE COURT: I --

5 MS. STEELE: -- Your Honor. But --

6 THE COURT: I know. But I can't -- I don't feel I
7 can force the debtor to do that. I think that's a business
8 judgment.

9 MS. STEELE: True.

10 THE COURT: All --

11 MS. STEELE: And we have asked the debtor to extend
12 the time for the gift cards, even if they -- if it, perhaps,
13 goes out one further week. But even with the limited time, the
14 case was just filed yesterday and I don't know -- I mean, I
15 couldn't figure it out, but I don't even know if they have
16 until the full weekend, next weekend or does it cut off on
17 Saturday.

18 It just seems like a very limited amount of time to
19 use those gift cards and we would suggest that it should be if
20 it's not extended to 30 days, perhaps 21 just allowing a little
21 more time for the gift cards.

22 MS. CORDRY: And, Your Honor --

23 THE COURT: Are you saying Mr. Hunter --

24 MS. CORDRY: -- this is Mr. Cordry, if I could speak
25 to this point?

1 THE COURT: Oh, yes.

2 MS. CORDRY: From the National Association of
3 Attorneys General, Karen Cordry.

4 These orders, yes, these are very standard orders.
5 We spent a lot of time starting in the Great Recession
6 negotiating the terms of these orders and they have practically
7 become I think black letter law almost at this point.

8 But the point about gift cards was one of the most
9 heavily negotiated and fought over issues in many, many, many
10 of these cases. I don't recall any of them being as short as
11 14 days. I think there's some real notice issues to customers.

12 And one of my other questions would be, if you do
13 start limiting it to that kind of time period, what notice are
14 customers going to be given; how much information is going to
15 go out to them to tell them that these cards they were promised
16 they could use forever are now going to be no good after only
17 14 days and, of course, the 14 highest priced days of the sale.

18 You know, we have litigated over that and I think the
19 states might be willing to come back in and push the issue
20 further on that point. So that is definitely one of the points
21 that we have a concern with in the order.

22 Also related to that is the question about latent
23 defects. We have had language in other orders that are much
24 more clear about the fact that people can -- speaking about
25 this point about returning items, that people could return

1 items if they buy it and it has a latent defect in it. I would
2 like to suggest that that language could, perhaps, be tweaked
3 slightly.

4 Two other points I was concerned about but seem like
5 they're okay is, one, is the question, I just want to emphasize
6 that sign-walkers and so forth that there could be safety
7 issues in that so that I just want to make sure that debtors'
8 aware that we -- the states would retain that right under the
9 health and safety governmental regulation kind of piece of it.

10 And the last piece was the question about personally
11 identifiable information. The motion, at one point, said, yes,
12 we're going to make sure there's no information passed on, but
13 at another point said we're going to use reasonably
14 commercially reasonable efforts.

15 But I do think the motion -- the final order is clear
16 that they will destroy the information. It will -- none of it
17 will be passed on with registers and so forth. So I do come
18 back to just basically those two points, the gift cards and the
19 latent defects that I think could be dealt with and then I
20 would go back to the states and say, you know, it fits within
21 our black letter law, but think right now, those two provisions
22 are somewhat less clear than what we have used in the past.

23 THE COURT: Mr. Hunter, do you want to respond?

24 MR. HUNTER: Yes, Your Honor. So I think, if I hear
25 right on the last two, the sign-walker issue and the privacy

1 information, it sounds like maybe those are final order issues.
2 You know, I do think the order is clear that health and safety
3 laws, you know, we have to comply with those.

4 MS. STEELE: Yeah.

5 MR. HUNTER: We heard about -- our expert had
6 submitted a declaration in connection with bidding procedures
7 on privacy and so I think we have actually put information out
8 on that front on a broader basis and so the debtors are taking
9 that very seriously. So that's what I'd say on those two.

10 Backing up to latent defects, the order has clear
11 language that the debtors will comply with all state and
12 federal laws relating to warrantees -- or latent defects. I'm
13 happy though to engage with Ms. Cordry on a final order if
14 they're -- it could be clearer, but that's obviously the intent
15 and so if it's a language issue, we have no problem there.

16 THE COURT: Did you hear that, Ms. Cordry?

17 MS. CORDRY: Yes. And we do have some language that
18 I can pass on, because I do think it's a little clearer because
19 people might not know what a latent defect is, but the way we
20 have used it in some other orders does spell out what the
21 problem is but, yes, I'll be happy to pass that onto him.

22 MR. HUNTER: Okay.

23 THE COURT: Because I read it and I thought I saw the
24 provision about latent defects and maybe it's not clear exactly
25 what a latent defect is, but if you could work out that

1 language real quickly that would be great.

2 MR. HUNTER: Okay. We will do that.

3 THE COURT: All right.

4 MR. HUNTER: And then on the gift card issue, I
5 totally understand where the U.S. Trustee is coming from. You
6 know, Your Honor, this is an economic issue. I think you
7 pointed out, it's a business judgment issue. You know, I think
8 it's a good point from a notice perspective.

9 I don't think anyone is surprised or doesn't know
10 that Bed Bath is here. You know, frankly, our recent troubles
11 and challenges have been very well publicized. Recent filings
12 have said point-blank if something doesn't happen, we will file
13 for bankruptcy; we are considering bankruptcy. It's been very
14 clear. So I don't think the consumer was not on notice that
15 there was risk in this area. And, of course, it's a little
16 different to file and -- and make it very clear you have 14
17 days. We understand that, but we have a noticing agent.

18 We're doing broad notice on top of, I think, the fact
19 that this is very mainstream at this point and I would just
20 emphasize, again, you know, it's economic. It's part of a hard
21 negotiation about the DIP budget, what we were going to fund,
22 what we weren't and, you know, it costs \$10 million a week for
23 gift card redemption.

24 So it's a material number that in the context of a
25 lot of issues, a lot of things that we did get covered, you

1 know, through the DIP, Ms. Geier walked through it, you know,
2 specific reserves to make sure we can do the right thing in
3 this case. This is one where we think 14 days was the right
4 balance between all those competing interests and that's why we
5 think it's appropriate, Your Honor.

6 UNIDENTIFIED SPEAKER: Your Honor?

7 MS. CORDRY: And, again, our point would be that if
8 you are going to have that short of a period, which is, again,
9 short -- and that's very different from knowing they're in
10 bankruptcy. I may know that you're in bankruptcy, but unless
11 you are specifically telling me in those notice provisions,
12 perhaps emailing to all those customers, that you have all
13 those -- information that you send out emails on -- unless I'm
14 getting notice that's telling me that my gift card is no good
15 after 10 days -- or 14 days, I'm sure, that's a very different
16 thing from knowing that there's a bankruptcy and I would want
17 to be sure that that is emphasized, that that needs to be part
18 of the noticing provisions.

19 MR. HUNTER: On the notice front, the liquidator is
20 going to be issuing a press release that has these details. So
21 it's going to be a literal press release to the world and these
22 details will be on there.

23 THE COURT: And on the website?

24 MR. HUNTER: It's on the website. I checked this
25 morning.

1 THE COURT: Did you get that --

2 MS. CORDRY: And emails to customers will -- can an
3 email be sent to all your customer base?

4 MR. HUNTER: I don't know if we have that kind of
5 information. There's a --

6 THE COURT: You do. My wife gets those emails all
7 the time.

8 (Laughter.)

9 MR. HUNTER: I don't know if she'll be happy about
10 more.

11 MS. CORDRY: And it may not be everyone who has a
12 gift card, but everyone who was one of your customers should be
13 able to get that notice.

14 THE COURT: I mean, in a way, couldn't you frame it
15 as a positive almost? Gift cards expire in 14 days, so come in
16 quickly. I don't know.

17 MR. HUNTER: No. Your Honor, we're doing everything
18 we can to publicize the liquidation sale and emphasize these
19 provisions. If there's supplemental things we can do, we're
20 happy to go back and look at it.

21 We are noticing our customers far and wide on the
22 impacts of liquidation, what their customer programs -- you
23 know, what this means with respect to the customer programs. I
24 think they're rolling. And if we're not already emailing all
25 customers that we have email addresses for, we will do that.

1 THE COURT: Okay. Did you hear that, Ms. Cordry?

2 MS. CORDRY: I hear that and the states will consider
3 whether that's sufficient or whether they want to object to a
4 final order --

5 THE COURT: Well --

6 MS. CORDRY: -- on still the same issues, because
7 there are some other points that are out there, as well. Thank
8 you.

9 THE COURT: All right.

10 MR. DALE: Your Honor, may I?

11 THE COURT: Yes, please.

12 MR. DALE: Charles Dale of Proskauer Rose with
13 Mr. Hillman. I represent 6th Street Specialty Lending.

14 Judge, we spent a lot of time calibrating the
15 interests of stakeholders that had pre-petition priority claims
16 just like consumers. You heard today about money that will be
17 spent to pay freight vendors, taxing authorities. A
18 substantial amount of money will be devoted to employees,
19 including employees who may have claims under the WARN act.

20 Your Honor, this is an eight figure liability that we
21 have provided for and we have calibrated what consumers ought
22 to get and I think it's safe to say, given the media coverage
23 of this case, Judge, there's not a consumer in America or
24 several other countries that doesn't know Bed Bath is in
25 bankruptcy and they ought to use their gift cards.

1 Even Mr. Sussberg's mother-in-law called him to get
2 advice on that.

3 THE COURT: Yeah.

4 MR. DALE: Thank you --

5 THE COURT: I --

6 MR. DALE: -- Your Honor.

7 THE COURT: I would say that I think, you know,
8 the -- you know, as the coupon was so popular and effective,
9 also I think Bed Bath & Beyond has become effective with that
10 because my wife does tell me, you know, about the coupon and I
11 was going to, you know, go to get whatever it was. But -- so I
12 think that's an easy thing to send to people and I think people
13 do pay attention to that and I didn't realize the number was
14 that big. I had no idea that the number was that big.

15 And just anecdotally, I think there's a big
16 difference between notice of a bankruptcy and notice of how
17 long you have to redeem a gift card. I agree with that point.
18 But on the notice issue, anecdotally, when I came in today, the
19 guard said to me, "I hear you got Bed Bath & Beyond," and I
20 said, "I do." He said, "Three days to return" -- "three days
21 to get your 20 percent." So --

22 (Laughter.)

23 THE COURT: -- that --

24 MS. CORDRY: Yeah.

25 THE COURT: -- so people are aware and I think if

1 they --

2 MS. CORDRY: Yeah.

3 THE COURT: -- if you put -- especially if you put an
4 email, maybe if it can be done, all the marketing people in a
5 positive way, maybe that'll be --

6 MR. HUNTER: And, Your Honor, I --

7 MR. DALE: Thank you.

8 MR. HUNTER: -- while I was on the side, I found out
9 that if you are a customer of Bed Bath, you have already
10 received this. They have actual -- the company's actually
11 already sent it out.

12 THE COURT: I'm sorry?

13 MR. HUNTER: The company's already sent out an
14 email --

15 THE COURT: Oh.

16 MR. HUNTER: -- with these deadlines.

17 THE COURT: See?

18 MS. CORDRY: Okay.

19 THE COURT: I knew you could do it.

20 MS. CORDRY: I would say that the -- Your Honor, I
21 would say that the website does not have that on there yet it
22 does not appear, so if it could be added to the -- that front
23 page of the website, that would be very helpful to people, as
24 well, I think.

25 MR. HUNTER: We -- it's in the FAQs related to

1 Chapter 11. I clicked through it today. But we'll -- if
2 there's a way to make it more prominent, we'll work on that but
3 I do know it's on the website.

4 MS. CORDRY: Well --

5 THE COURT: All right.

6 MS. CORDRY: -- it's not on the front of the website,
7 because I'm looking at it right now.

8 THE COURT: Oh, okay.

9 MS. CORDRY: Okay. Thank you. Thank you very much,
10 Your Honor.

11 THE COURT: Thank you.

12 MS. STEELE: Your Honor, the U.S. Trustee understands
13 the comments. We're disappointed for those customers that go
14 in on day 15 or take their gift cards when they go to return
15 things, but we understand it's their business judgment. But
16 we're hopeful this doesn't set a precedent in further cases
17 that the gift card return policy will be so short.

18 THE COURT: Yeah. Yeah. I -- the only precedent is
19 that I think it's a -- there's a business judgment precedent --

20 MS. STEELE: Right.

21 THE COURT: -- that I -- and this is unique to these
22 circumstances that they have this compressed timeline and all
23 that and I just can't -- I don't think I'm permitted to
24 substitute my judgment for theirs on this point.

25 MS. STEELE: And I understand that. I just wanted to

1 voice our concerns.

2 THE COURT: It's a legitimate --

3 MS. STEELE: Thank you.

4 THE COURT: -- concern. You and Ms. Cordry voiced it
5 very well.

6 MS. STEELE: Thank you.

7 THE COURT: And it seems like someone else wants to
8 voice a concern.

9 MR. FLEISCHER: Good afternoon, Your Honor. Scott
10 Fleischer of Barclay Damon on behalf of a number of the
11 landlords, as was referenced earlier today. Just a narrow
12 issue to change the subject off of gift cards here.

13 THE COURT: Um-hum.

14 MR. FLEISCHER: One aspect of the sale guidelines,
15 right, which cover these store closing sales, allows the
16 debtors to use the verbiage "going out of business" on their
17 large exterior signs in certain shopping centers now. So we
18 thought that that was not really the best way to introduce the
19 public to these sort of new and improved store closing sales.
20 And for the landlord parochial interests, we don't want a giant
21 sign that says going out of business when there doesn't have to
22 be.

23 So especially now with the posture of the case being
24 that there is still a possibility of a sale out there, whether
25 in part or in whole, who knows, it didn't seem appropriate to

1 have going out of business out there right now. And I
2 understand this is probably something the debtors don't want
3 either. I would imagine this was probably something that
4 was -- that turned on the finances of the sales and they
5 probably think they can -- maybe the lenders think they can get
6 some more value out of it if it says going out of business.
7 But it seems like there should be, perhaps, a date when we can
8 pivot from something that says "store closing," which is
9 accurate now to "going out of business" down the road, such as
10 pass the bid deadline if there's no going concern, you know,
11 buyer that comes available. So --

12 THE COURT: And you're how many -- how many stores do
13 you represent?

14 MR. FLEISCHER: I'm still getting a count. So, so
15 far, let's see, one -- looks like five groups of landlords. We
16 have: RPT Realty, DLC Management, Inland Commercial Real
17 Estate Services, Rivercrest Realty Associates, Westfield and
18 possibly others. Still gathering the list. Somewhere in the
19 double digits. I don't know how high it's gotten so far.

20 THE COURT: One -- all right. Well, Mr. Hunter, do
21 you want to respond?

22 MR. HUNTER: Yes.

23 THE COURT: I thought it did say things like you
24 could say things like in the general area of going out of
25 business and --

1 MR. HUNTER: Yes. The order does provide, you know,
2 I think, customary latitude to advertise these sales as the
3 liquidators and the company sees fit. It's a business judgment
4 issue. And so -- but, of course, it relates to costs and the
5 sales being effective but, you know, the advertisements are,
6 you know -- cost money.

7 We have planned for these going out of business
8 sales. We have been doing them already. And at the end of the
9 day, while we are, as Mr. Sussberg puts it, running out every
10 ground ball and, you know, we hope that there's a value
11 maximizing transaction here, the company's business judgment is
12 to begin store liquidation sales immediately and what that goes
13 along with.

14 And whether every store says going out of business or
15 not, I don't know. I leave that to the company and Hilco. But
16 they're going to pursue it promptly in the way that they seek
17 to maximize value and that's really all we're trying to do at
18 the end of the day.

19 Of course, if we had -- if we thought it made sense
20 to wait around for weeks without, you know, going out of
21 business signs on the stores, that's what we would do. But
22 practical reality is that's just not where we are right now and
23 we want to maximize value regardless of what happens. And by
24 do -- you know, we think doing that just, you know, requires us
25 to have this flexibility, which is customary, Your Honor.

1 THE COURT: All right. Mister -- and there's nothing
2 that prevents you from speaking with debtors or Hilco or
3 whatever and Mr. Fleischer and trying to work that out. Maybe
4 if it's a cost issue, you -- and you want it, you can help them
5 defray the cost somehow or another. I'm just trying to offer
6 solutions --

7 MR. FLEISCHER: That's an interesting ask, Your
8 Honor. I think we'll have to think about a cost problem.
9 Again, I think it was more of a it's a combination of their
10 just being a notice issue almost to the public, right, that is
11 not necessarily going out of business. We all hope that it's
12 not going out of business. So to have those signs up there
13 just doesn't seem like the best way to start. And, again, they
14 do have that flexibility and, you know, we talk about whether
15 there should, you know, be a carve out of some kind perhaps,
16 but it did seem like at least if not a bid deadline issue, a
17 final order issue to have actual going out of business.

18 It's very common in these orders that at -- on the
19 interim, you can't say going out of business. You could stay
20 store closing sale and everything and we have, you know, plenty
21 of samples with Kirkland and others with those orders. It's
22 usually triggered by an actual shift to an entire GOB through a
23 separate order or a final order on store closing.

24 THE COURT: But -- and I appreciate what you're
25 saying and what you're saying makes sense, but I turn to the

1 same thing that I said to Ms. Steele is that, how do I -- if
2 the experts say this is how they want to do it to maximize the
3 sale, how do I say that's not the right way to do it. I just I
4 don't know how. I don't think I have that authority, frankly,
5 and, you know, I'm -- you can do a side letter. We just talked
6 about the --

7 MR. FLEISCHER: I --

8 THE COURT: -- side letter.

9 MR. FLEISCHER: I certainly will.

10 THE COURT: Yeah.

11 MR. FLEISCHER: I certainly will. We do them all the
12 time. I'm very confident we'll be able to reach agreement on a
13 letter. We had discussed this particular issue and we resolved
14 many of our other issues through the order that you'll see in a
15 redline on here on bid procedures and DIP. So this was just
16 that last piece we wanted to get through. So we'll look to
17 revisit this perhaps at another time.

18 THE COURT: All right. I appreciate it and, you
19 know, I just like I say, I can't -- I don't feel it appropriate
20 to substitute my judgment for the experts and I'm going to
21 let -- I'm going to leave it to their good judgment as to how
22 that issue gets resolved and that --

23 MR. FLEISCHER: Understood, Your Honor.

24 THE COURT: -- and hopefully you can come to an
25 accommodation.

1 MR. FLEISCHER: Thank you very much.

2 THE COURT: Thank you, Mr. Fleischer.

3 MR. HUNTER: Your Honor, with that we did submit --
4 you know, I handed up a redline. I do believe it's resolved
5 with all parties other than those issues we just talked about.
6 So I'm happy to flip through the specific changes if you'd
7 like; otherwise, you know, I do think it's resolved and we
8 would ask that you enter the order.

9 THE COURT: Just one -- I had a question about the
10 additional goods.

11 Is there some kind of guideline on that or is it just
12 that whatever additional goods there are can be brought in?

13 MR. HUNTER: Yeah. It's like "goods of similar
14 quality," I believe is the wording. It's something along those
15 lines.

16 THE COURT: There's a lot of goods --

17 MR. HUNTER: Yeah.

18 THE COURT: -- with similar qualities --

19 MR. HUNTER: Yeah.

20 THE COURT: -- right? I mean it could -- that's a
21 broad universe.

22 MR. HUNTER: It's a benefit of a Bed Bath & Beyond,
23 Your Honor.

24 THE COURT: Yeah.

25 MR. HUNTER: So it can't be wholly unrelated. It

1 can't degradate the sale process or the business. It's meant
2 to go along with similar products that are already sold and
3 we -- I think we have consistent language with other going out
4 of business sales as it relates to that.

5 THE COURT: So the answer is there is no limit, it's
6 just that constraint?

7 MR. HUNTER: You mean a quantity limit?

8 THE COURT: Yeah.

9 MR. HUNTER: Oh, no. I don't think there is. You
10 can put as many of those as the liquidator and the company
11 think makes sense and facilitates the sale.

12 THE COURT: And the debtor gets 7.5 percent of that?

13 MR. HUNTER: Exactly, Your Honor.

14 THE COURT: All right. Okay. I don't -- it's 4:30
15 and I don't want to keep all these people here if we don't have
16 to. I just -- I didn't go through the specific changes. I
17 don't -- I will go through them. I have it right here and I'm
18 sure they're fine, as everyone has agreed to them except for
19 the points that were raised about the -- I guess, well,
20 actually about the latent defects. I mean but that would go in
21 this order, right?

22 MR. HUNTER: Yes. There's language already in the
23 order. I think the point was Ms. Cordry thought it was
24 insufficient.

25 THE COURT: Yeah.

1 MR. HUNTER: So we're happy to look at her language
2 quickly. Maybe what it makes sense to do is we'll end up
3 probably making a few tweaks. We'll submit it to Your Honor's
4 chambers after the hearing once we have agreed on that.

5 THE COURT: Okay.

6 MS. STEELE: Yes.

7 THE COURT: Yes?

8 MS. STEELE: Your Honor, I'm getting ready to send in
9 the language right now. So --

10 THE COURT: Okay.

11 MS. STEELE: -- they will see that on the latent
12 defects.

13 THE COURT: Sending you language.

14 MR. HUNTER: Okay.

15 THE COURT: All righty.

16 MR. HUNTER: Great.

17 THE COURT: Thank you.

18 MR. HUNTER: So we --

19 MS. STEELE: Thank you.

20 MR. HUNTER: -- we would just ask that if we could --
21 you know, when we're in agreement with Ms. Cordry and submit an
22 order --

23 THE COURT: Just submit it --

24 MR. HUNTER: -- at the end of the day.

25 THE COURT: -- and tell me that's what happened. And

1 if not, you'll tell me what the disagreement is and I'll just
2 decide it right there.

3 MR. HUNTER: Okay.

4 THE COURT: Okay?

5 MR. HUNTER: Thank you, Your Honor. With that, my
6 part is done here. I'll turn it over to my colleague,
7 Mr. Fiedler.

8 THE COURT: Okay.

9 MR. FIEDLER: Good afternoon, Your Honor. For the
10 record, Ross Fiedler of Kirkland & Ellis on behalf the debtors.

11 In the same spirit as Mr. Hunter, I'll try to be
12 quick.

13 THE COURT: Okay.

14 MR. FIEDLER: The next item on the agenda is the lien
15 holder motion. This was filed at Docket Number 22. By this
16 motion, we're seeking authorization to make payments to folks
17 who have a prepetition claim for goods or services delivered in
18 which such claimants may assert potential liens against the
19 debtors. These folks consist mainly of freight vendors and
20 third party warehousemen. And as was made clear in the
21 presentation, it's imperative that the company be able to
22 efficiently and expeditiously route merchandise from its
23 distribution centers to the stores.

24 I understand there are no comments from the U.S.
25 Trustee. So unless Your Honor has any comments, we'd

1 respectfully request entry of the order.

2 THE COURT: Right. So the one thing that was unusual
3 about this, to me, was that it was to pay prepetition secured
4 claims and it wasn't to pay any other, you know, critical
5 vendors and I don't see that motion here at all.

6 MS. STEELE: That's a good thing, Your Honor.

7 THE COURT: Yeah. No. I mean it's different. It's
8 different. It's just different and --

9 MR. FIEDLER: Yeah.

10 THE COURT: -- so I understand it's just different
11 and that was what -- that's what popped out to me. I -- as was
12 demonstrated by counsel for the lender, you know, the -- all
13 these things were gone over with a fine tooth comb. You can
14 see it. You can see it in the words and what is being said
15 here today. So I really -- I don't have any issues with that
16 and I will enter the order.

17 MR. FIEDLER: Thank you, Your Honor.

18 Next is agenda item 7. This is the surety -- surety
19 and insurance bond motion. This is standard motion. We're
20 seeking interim relief to continue the debtors' ordinary course
21 insurance and surety bond program. We have approximately 50
22 insurance policies, 10 surety bonds outstanding.

23 We understand we're largely consensual on the motion.
24 We haven't received any further comments from the U.S. Trustee.
25 So if Your Honor has any questions, I'd be happy to answer

1 them.

2 THE COURT: No. We want you to have insurance. I'm
3 in favor of that, as is the U.S. Trustee.

4 MS. STEELE: Yes, Your Honor.

5 THE COURT: Thank you. So that'll be approved, as
6 well.

7 MR. FIEDLER: Thank you, Your Honor.

8 Next is agenda item 8 filed at Docket Number 12.
9 This is the taxes motion. Again, very standard. We're seeking
10 authorization to pay sales and use taxes, as well as certain
11 regulatory assessments and other permitting fees, so obviously
12 these are critical to continue operating the business.

13 If Your Honor has any questions, I'd be happy to
14 answer those but we are resolved on the issues.

15 THE COURT: Well, I -- again, I'm not sure I saw
16 exactly where the funding for all these payments came from, but
17 I guess you make them if you can and I know you have to pay the
18 taxes as well, so I'll approve that also.

19 MR. FIEDLER: Okay. Great, Your Honor. That's it
20 for me. So now I'll turn it over to my colleague,
21 Mr. Sterrett.

22 THE COURT: Okay. Thank you.

23 MR. STERRETT: Good afternoon, Your Honor. Charlie
24 Sterrett of Kirkland & Ellis on behalf of the debtors.

25 THE COURT: Good afternoon.

1 MR. STERRETT: I'm going to try to set the record for
2 the quickest pace here on the Kirkland side.

3 THE COURT: No problem.

4 MR. STERRETT: I'll be taking us to the balance of
5 the agenda this afternoon.

6 THE COURT: Okay. Great.

7 MR. STERRETT: We'll start with the utilities motion
8 filed at Docket Number 21. This seeks customary utilities
9 relief and affixes an adequate assurance amount for the debtors
10 at half of a month's utilities expense based on the run rate
11 prepetition, less any amounts currently on deposit with the
12 utilities. Those are offset.

13 We're fully resolved with all parties on this order,
14 including the U.S. Trustee. We took one comment in the version
15 order we'll be submitting to the Court later this afternoon
16 from a landlord and it's, you know, purely reservation-of-
17 rights type language.

18 And so, you know, with that, I'd like to ask the
19 Court, if you'd prefer, we submit all of our orders once more
20 at the end of this hearing this evening for you to review and
21 sign or, you know, should we go only with those that have
22 changed?

23 THE COURT: That's a good point because it does get
24 confusing for Mr. Fiedler. Yes, there is on -- when, you know,
25 some of them are final and some of them aren't. But that's

1 probably your -- that's probably a very good idea. So why
2 don't you -- the only thing that means is that, you know, it's
3 4:30 now and I'm not sure.

4 Is it critical that they be entered or is tomorrow
5 morning also -- I actually have motions tomorrow morning, but
6 you'll let me know.

7 MR. HUNTER: Well, Your Honor, I think there --

8 MR. STERRETT: It's --

9 MR. HUNTER: -- are a few that it's critical that we
10 get entered today so that the payroll can get processed. That
11 would be cash management, wages, the DIP, and joint
12 administration. The rest, no problem.

13 THE COURT: Cash management, wages, DIP and joint
14 administration. Well, of those, we did -- we didn't do joint
15 administration and the wages we did. So just -- well, those
16 four, right --

17 MR. HUNTER: Yes.

18 THE COURT: -- will be done.

19 MR. HUNTER: Thank you, Your Honor.

20 THE COURT: Okay, Mr. Fielder?

21 MR. FIEDLER: No problem.

22 THE COURT: All right. But still with that same
23 process and if we could get a few more entered, we'll do that,
24 as well.

25 MR. HUNTER: Okay.

1 MR. STERRETT: Thank you, Your Honor. We endeavor to
2 make everyone's lives a little easier if we can.

3 THE COURT: Okay.

4 MR. STERRETT: And, you know, absent any objections
5 from the courtroom, we request your entry of the utilities
6 order.

7 THE COURT: Yeah. No. I saw what -- you know, the
8 application seemed very reasonable and, you know, the deposits
9 are there and it's an interim order, like a lot of these are,
10 so I'm happy to enter the order.

11 MR. STERRETT: Thank you, Your Honor.

12 The next is the NOL motion filed at Docket Number 23.
13 Through this order, the debtors are seeking approval of
14 procedures for certain transfers of common and preferred stock.
15 The debtors have considerable tax attributes that are valuable
16 and in a case where value is cut so thin and we're, you know,
17 focused on efficiency and preserving value of the estates, this
18 is an incredibly important motion at this juncture.

19 And all we're seeking to do is provide control to the
20 estates and the debtors in terms of understanding what
21 transfers are being made and giving an opportunity to object to
22 any that would threaten the tax attributes.

23 We're fully resolved with all parties and interests
24 that have raised concerns and the U.S. Trustee's language is
25 incorporated into the order that's with the Court. So absent

1 any questions, we'd request your entry of the NOL order.

2 THE COURT: All right. I -- on this one, I just --
3 this one actually bleeds over into another one about the
4 waiving the requirement of the list of equity security holders,
5 which it sounds like you're handling. And I understand the
6 part about the common shareholders and all that.

7 But like if, for example, in this one, if a
8 substantial shareholder is an entity that has beneficial
9 ownership of 4.5 percent and I was wondering -- and then in
10 order to send them this notice, you have to know that there's
11 someone who has 4.5 percent, right?

12 MR. STERRETT: That's right, Your Honor. Well,
13 however I'll state that we are noticing this to all, you know,
14 known registered equity holders, common and preferred, to the
15 extent, you know, we have the information necessary to do so.
16 Our claim -- proposed claims and noticing agent, Kroll, is
17 working with AST, American Stock Transfer, to get as much
18 noticing information for common equity holders as possible.

19 So, you know, we are trying to notice as much as we
20 can and, you know, this contemplates 4.5 percent holders of
21 common and preferred, but it also, you know, is anybody who's
22 interested in owning 4.5 percent of common. So that --

23 THE COURT: Right. Right. But like I said, I was
24 kind of focused on the other one, on the one where you were
25 waiving the list of equity holders and I understand it, again,

1 as to the common stock.

2 I'm just wondering why you wouldn't want to, if you
3 know it and it seems like you know it, you wouldn't want to
4 just specifically -- why you wouldn't be able to specifically
5 list those equity holders at more than 4.5 percent and -- yeah.
6 I don't -- I'm just not sure why you would -- why it -- is that
7 a problem or is it to list those people that have --

8 MR. STERRETT: We're happy to do so. We're happy to
9 list --

10 THE COURT: -- well --

11 MR. STERRETT: -- equity holders with --

12 THE COURT: -- if so. I mean people -- I think
13 people, if there's one thing that lawyer -- sometimes lawyers
14 and other people look at is, like, who owns this and I think
15 you -- I don't think it's that hard to do. So and I don't want
16 to put an undue burden on. I just want to -- especially people
17 that are subject to this, why not notice them and put them on
18 the list.

19 MR. STERRETT: We're happy to.

20 THE COURT: All right.

21 MR. STERRETT: Absolutely.

22 THE COURT: Great. Thank you.

23 MR. STERRETT: All right. So absent any further
24 questions, we'd respectfully request your entry of the NOL
25 order.

1 THE COURT: Yeah. And I think we might have just
2 covered two with one.

3 MR. STERRETT: I'll take it. Yeah.

4 THE COURT: All right.

5 MR. STERRETT: Great. Absolutely. We'll move on
6 then to the joint administration order entered or at -- filed
7 at Docket Number 5.

8 THE COURT: Uh-huh.

9 MR. STERRETT: We have 75 affiliated entities and
10 we're seeking routine relief to administer these complex cases
11 under the publicly traded name of the -- the name of the
12 publicly traded parent company, Bed Bath & Beyond, Inc.

13 MS. STEELE: Yes, Your Honor. And the U.S. Trustee
14 has no objection and the debtor did place language in the order
15 that we requested that the monthly operating reports, under the
16 new guidelines, are filed in each case and that was agreed to
17 and put into the order.

18 THE COURT: Okay. Yeah. Well, I mean the --
19 certainly, this is a good base to be jointly administered and
20 you addressed that concern, so it would be not a good case to
21 not have jointly administered, so that's a pretty easy one.

22 MR. STERRETT: We agree wholeheartedly. Thank you,
23 Your Honor.

24 We'll move onto the case management motion, which is
25 filed at Docket Number 7. We're aware of the 2009 general

1 order in place in the District of New Jersey. However, you
2 know, a lot of time has passed in, you know, since 2009 and
3 our -- we seek with our case management procedures to, you
4 know, move things into the, you know, 2020s here.

5 THE COURT: Right. Yeah. I -- that's a little bit
6 of a shot, but I'll take it.

7 MR. STERRETT: Made respect of -- respectfully, of
8 course.

9 THE COURT: All right. It's okay. I got it.

10 MR. STERRETT: And so these are --

11 THE COURT: I'm going to have to talk to the chief
12 judge about that one.

13 MR. STERRETT: And these are routine procedures and
14 are seeking to, you know, ease the administrative burden on the
15 Court and the parties in terms of, you know, setting the table
16 for the administration of these cases. And so happy to discuss
17 and, you know, we've been thinking about scheduling and we're
18 happy to do so now or at the end. But -- or separately
19 through, you know, discussing with chambers, but that's what
20 would be accomplished as part of this motion. So absent any
21 questions, we'd request your entry of the case management
22 order.

23 THE COURT: You went -- the U.S. Trustee's okay with
24 this one?

25 MS. STEELE: Yes, Your Honor. No objection.

1 THE COURT: Yeah. I think it's a good thing to have
2 those case management procedures and guidelines updated, as
3 well, and to -- makes sense to me, so we'll approve that order,
4 as well.

5 MR. STERRETT: Great. Thank you, Your Honor.

6 Next up is the claims agent 156(c), retention
7 application for Kroll filed at Docket Number 6. Here we have
8 got Kroll, who's, you know, amply capable of handling the
9 responsibilities of claims and noticing agent in these cases.
10 They will serve as noticing agent on the case website and
11 assist with the, you know, copious noticing required in this
12 case, thousands of stakeholders, and we think they're up for
13 the case. So absent any questions, we'd request your entry of
14 order.

15 THE COURT: No. They're certainly well-known and
16 well regarded and I have no problem with them serving as the
17 agent that way.

18 MR. STERRETT: Thank you.

19 THE COURT: So we'll approve that, as well.

20 MR. STERRETT: Great.

21 MS. STEELE: No objection, Your Honor.

22 THE COURT: All right. I'm sorry. Thank you. Thank
23 you. I rule quickly.

24 MR. STERRETT: We're moving at a break-neck pace. So
25 next up is the creditor matrix motion filed at Docket Number 8,

1 which you mentioned earlier. We might have, you know, killed
2 two birds with one stone. I just want to flag that, you know,
3 here -- with herein, we are working with redaction of
4 personally identifiable information and that includes home and
5 email addresses of individual creditors and all personally
6 identifiable information of minors. I understand we're
7 resolved with the U.S. Trustee on that point and all other
8 objections and requested information's incorporated in this
9 order. So absent any questions, we'd request your entry.

10 THE COURT: Anyone have any comments?

11 MS. STEELE: No objection, Your Honor.

12 THE COURT: Well, I think this is a very standard and
13 appropriate order, as well, and that you addressed personally
14 identifiable information issues. So that will be entered, as
15 well.

16 MR. STERRETT: Thank you, Your Honor. Two more to
17 go.

18 THE COURT: All right.

19 MR. STERRETT: We have the SOFA and schedule
20 extension, timeline extension, motion filed at Docket Number 9.
21 Herein, we're requesting a 20-day extension of the timeline by
22 which we must replay our schedules and statements. This is
23 trying strike a balance between the shortened timeline for
24 these cases and the massive amounts of leases, contracts and
25 other books and records of the company.

1 THE COURT: So I have no problem with that obviously,
2 but I -- and I think this almost goes without saying, and I
3 know it'll happen, is that, of course, when the Committee gets
4 appointed, you'll be -- exchange with them the information that
5 they reasonably request so that they can get up to speed on all
6 kinds of different issues, including the liens and all other --
7 and that.

8 You know, because normally they need the schedules to
9 do at least part of that investigation. So, like I say, I have
10 no problem with the 20 days, but I do think I'm informally or,
11 you know, unofficially saying that also assumes that you're
12 going to be cooperating with them and providing them, answering
13 their reasonable requests.

14 MR. STERRETT: Of course.

15 MS. STEELE: Yes, Your Honor. And just with respect
16 to the U.S. Trustee, we have spoken to counsel and that puts
17 the date that the schedules would be filed on or around
18 May 30th and we have sent -- set a tentative date for the 341
19 for June 5th. So we're hopeful that there won't be any
20 extensions for requests for the schedules and Statement of
21 Affairs so we can receive them on or about the 30th in order to
22 prepare for the 341 meeting.

23 THE COURT: Yeah. You know we actually had a
24 different date. I think it fell on a Saturday, but maybe
25 that's --

1 MS. STEELE: Okay.

2 THE COURT: -- why you're saying the --

3 MS. STEELE: Oh, that's -- because Monday is Memorial
4 Day. So I moved it --

5 THE COURT: Memorial -- yeah. That's -- so that's
6 why you're saying it.

7 MS. STEELE: I moved it to Tuesday.

8 THE COURT: Yeah. Yeah. So --

9 MR. STERRETT: We'll take the free days at the end of
10 our --

11 THE COURT: Oh, yeah. Yeah.

12 MR. STERRETT: Yeah. Right.

13 THE COURT: You have got to --

14 MR. STERRETT: Absolutely.

15 THE COURT: You know add an extra day bonus you got.

16 MR. STERRETT: Yeah. So absent any further questions
17 or comments, we'd respect --

18 THE COURT: Well --

19 MR. STERRETT: -- respectfully request --

20 THE COURT: -- I --

21 MR. STERRETT: -- your entry of that order.

22 THE COURT: That's good. That'll be approved, as
23 well.

24 MR. STERRETT: Great. Thank you, Your Honor.

25 And that takes us to the last item on the debtors'

1 agenda today and that's a largely administrative and, you know,
2 procedural order on cross-border protocols. That's filed at
3 Docket Number 24.

4 By these protocols, we seek to just put in place kind
5 of the guidelines and framework for the interplay between -- if
6 necessary, any interplay between the debtors can -- non-debtor
7 affiliates Canadian proceeding in Canada. That's anticipated
8 to wrap up in short order, but to the extent there's any
9 overlap and interplay between the U.S. proceeding and the
10 Canadian proceeding, we want to put these in place in the
11 interest of comity, you know, cross-border judicial
12 administration efficiency.

13 THE COURT: Well, I do have one question on that one
14 is that --

15 MR. STERRETT: Okay.

16 THE COURT: -- was that presented to the Canadian
17 court?

18 MR. STERRETT: It hasn't been presented to the
19 Canadian court and based on the timeline of the CCWA, it may
20 not need to be. But we want to make sure that our piece of the
21 puzzle is in place in case anything comes up where they need to
22 present this to the court.

23 THE COURT: But in the interest of comity, so to be
24 consistent, wouldn't it make sense that both of us are okay
25 with it before it gets entered in one? Unless that's a

1 problem. I just I want to do what the order says is what I'm
2 saying.

3 MR. STERRETT: That's --

4 THE COURT: The order is saying that we should be in
5 comity with each other, right? I mean being in comity with
6 each other, to me, means that you are on the same page on
7 things and I don't have any problem with anything I read in
8 there.

9 But, you know, I just I -- as much as I'm saying it
10 for notice purposes, I'm saying it out of respect and comity
11 purposes, so if you could just tell me. Is your Canadian
12 counsel going to --

13 MR. STERRETT: Okay. Let us confer with Canadian
14 counsel on this. I think we can, you know -- I don't think
15 there's anything urgent and pressing cross-border between --

16 THE COURT: Yeah. This doesn't --

17 MR. STERRETT: -- the U.S. proceeding --

18 THE COURT: -- seem urgent.

19 MR. STERRETT: -- I think we're --

20 THE COURT: Out of all the things in this case --

21 MR. STERRETT: Right.

22 THE COURT: -- this one does not seem urgent.

23 MR. STERRETT: Right. I think --

24 THE COURT: So I --

25 MR. STERRETT: Yeah. We don't foresee any issues on

1 a cross-border basis between the Canadian and U.S. proceedings
2 here. This was purely, you know, administrative and, you know,
3 relatively standard in retail, cross-border retails. However,
4 we understand your concern and we can come back to this after
5 we have conferred --

6 THE COURT: All right.

7 MR. STERRETT: -- with Canadian --

8 THE COURT: So we'll hold off --

9 MR. STERRETT: -- counsel.

10 THE COURT: -- on that one until you give us the
11 heads up that it's okay. And that -- and I don't know if
12 you're handling this part or --

13 MR. STERRETT: I feel like someone's right behind me.

14 THE COURT: Yeah. Yeah, he is. Yeah, because we
15 need to set dates or a date --

16 MS. GEIER: When am I not hovering over your --

17 MR. STERRETT: It's okay.

18 THE COURT: -- we need to --

19 MR. STERRETT: -- I'll cede the podium to --

20 THE COURT: -- we need to set dates --

21 MR. STERRETT: -- Ms. Geier.

22 THE COURT: -- for the final hearings. Is that why
23 you're getting up?

24 MS. GEIER: Yes, Your Honor. Emily Geier again on
25 behalf of the debtors just here to talk about dates. I believe

1 Your Honor wanted to get on the record, we have -- I think we
2 have discussed and agreed on May 16th assuming other parties
3 don't have an issue with that and that works for Your Honor's
4 schedule or at least that was what had been --

5 THE COURT: Well, here --

6 MS. GEIER: -- discussed to some extent.

7 THE COURT: -- is the thing, right? Here's the
8 thing, right, that I actually have somewhat of a heavy motion
9 calendar tomorrow and because I was provided with a lot of
10 reading materials, I had to put off a couple of the more
11 substantive things to May 16th.

12 MS. GEIER: I see, Your Honor.

13 THE COURT: And that I already did that and I -- in
14 fact, I think one of the attorneys that got up here,
15 Mr. Fleischer, is the attorney on one of the cases, just a
16 completely different case. But --

17 MS. GEIER: Do you think Mr. Fleischer would like to
18 continue that one and make this easier on us?

19 THE COURT: I know that --

20 MS. GEIER: I'm sure we can find another date.

21 THE COURT: Yeah. So --

22 MS. GEIER: That's no problem.

23 THE COURT: So anyway, so that, I know, is already a
24 heavy motion day that morning and so then it would be in the
25 afternoon, I think. Is that -- or I don't know if there's

1 travel schedules or issues or --

2 MR. HUNTER: That's fine.

3 MS. GEIER: The afternoon is fine for the debtors,
4 Your Honor. If that's an issue for anyone else, otherwise --

5 MS. STEELE: The afternoon is fine for the U.S.
6 Trustee, Your Honor.

7 THE COURT: Okay. All right. Or I could give you
8 another date if, you know, the -- and the other -- I have a lot
9 of scheduling things that I need to discuss. Another one is
10 that I have -- you see there's all these books behind me and I
11 have had an ongoing trial that is basically Wednesdays, then
12 Fridays, because that's the days that I have.

13 And they just told me the last day that it's likely
14 go into June or July. So I have hearings every Tuesday and
15 Thursday and I have trials -- not every Wednesday and Friday,
16 because people have scheduling conflicts, but a lot of
17 Wednesdays and Fridays.

18 So on the omnibus dates, it felt like maybe we
19 would -- well, I have two -- there's two minds on that because
20 I think the 16th could be a very important and busy one and it
21 could be a number of things on that day, but then as the case
22 progresses, they get less heavy.

23 So, you know, we could -- like I say, if there's a
24 week that I have some flexibility, it's probably -- when do --
25 that's the week we don't have a trial, only one day, right?

1 MR. STERRETT: Well, we do on the --

2 THE COURT: The --

3 MR. STERRETT: -- 17th.

4 THE COURT: -- May 14th week -- May 15th week one?

5 MR. STERRETT: Right. And we do have on the 17th.

6 THE COURT: We do have it on the 17th.

7 MR. STERRETT: Yeah.

8 THE COURT: Yeah. So anyway, I -- if you want to do
9 it on the afternoon of the 16th, we'll do it on the afternoon
10 of the 16th.

11 MS. GEIER: Okay. Thank you, Your Honor.

12 MS. STEELE: Thank you, Your Honor.

13 MS. GEIER: Are there --

14 THE COURT: Then --

15 MS. GEIER: -- other dates that you wanted to discuss
16 or --

17 THE COURT: Yeah. So another thing is that I
18 actually have a longstanding family vacation planned. It's
19 actually not much of a -- it's not really a vacation. It's to
20 do something with my wife's family and I'm leaving Sunday and I
21 won't be back until the following Sunday.

22 So it seems like things are under control and it
23 won't be an issue, but if there is an issue, I'm going to be
24 out of pocket. And if there is an issue, you know, you just
25 contact Mr. Fugetis and he'll -- or my -- or one of my clerks

1 and let them know that you need a hearing or you need -- and I
2 have already spoke to one or two of my colleagues and I'll --
3 you know, it depends on the day, but people, you know --
4 someone else will be available if some kind of emergent issue
5 comes up.

6 MS. GEIER: Thank you so much, Your Honor. We will
7 strive to make every, every effort that no issue comes up
8 during that time and I'm sure we can resolve anything pending
9 your return. But --

10 THE COURT: Well, I'm okay if you go to somebody else
11 resolves it.

12 (Laughter.)

13 MS. GEIER: We wouldn't dream of it.

14 We believe that the objection deadline is set by
15 Local Rules seven days in advance from the 16th, but please let
16 me know if that is incorrect and we'll make sure to plug in the
17 correct date for the objection deadline for the hearing.

18 THE COURT: Yeah.

19 MS. GEIER: Seven days, correct?

20 THE COURT: Yeah.

21 MS. GEIER: Yes?

22 THE COURT: That's right.

23 MS. GEIER: Okay.

24 THE COURT: Yeah.

25 MS. STEELE: And, Your Honor --

1 MS. GEIER: Perfect.

2 MS. STEELE: -- just with respect to the objection
3 date. You know, we're going to try to form the Committee as
4 fast as possible, but I'm sure if the Committee would need a
5 day or so, I'm sure they could reach out to counsel. I see
6 everyone nodding their heads, so I just wanted to put that --

7 THE COURT: Yeah.

8 MS. STEELE: -- on the record.

9 MS. GEIER: Of course.

10 THE COURT: Yeah. And if there's --

11 MS. STEELE: Thank you.

12 THE COURT: -- a scheduling issue, you come to me and
13 I'll resolve it and --

14 MS. STEELE: Thank you, Your Honor.

15 THE COURT: -- and I'll try to be reasonable. That's
16 what I try to do.

17 MR. HUNTER: Thank you.

18 MS. GEIER: Amazing. Thank you so much, Your Honor,
19 for hearing us on such short notice and reading all of the
20 thousands of pages that we sent you. So thank you very much
21 for your time.

22 THE COURT: No, no. We're glad to be of assistance
23 and I -- you know, many cases -- you always want the cases to
24 turn out well, but as we started out today with the initial
25 presentation, this is a different case and a special case and

1 especially want it to succeed and we -- and I'm very, very
2 convinced that the right team is there to -- and I'm not just
3 speaking about the debtors' side.

4 I'm speaking about all the parties that the --
5 because I have seen it. It's evident in the papers. And all
6 the parties working together, that's what this process is
7 really ultimately all about, as you all know, and I wish you
8 much luck and I know that there's going to be a hard -- a lot
9 of hard work and hopefully success, okay?

10 MS. GEIER: Thank you, Judge.

11 ATTORNEYS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 ATTORNEYS: Thank you.

14 THE COURT: Thank you.

15 MS. GEIER: Your Honor --

16 UNIDENTIFIED SPEAKER: Judge, just want to set the
17 time.

18 THE COURT: Two -- oh, yeah, 2:00.

19 MS. STEELE: 2:00.

20 UNIDENTIFIED SPEAKER: 2:30 or we might have --

21 THE COURT: 2:00 -- I think that could be a little
22 bit of a heavy day. It's possible to be a heavy day.

23 UNIDENTIFIED SPEAKER: So 2:30 then?

24 THE COURT: 2:00.

25 UNIDENTIFIED SPEAKER: 2:00.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. STEELE: 2:00.

UNIDENTIFIED SPEAKER: Okay.

MS. STEELE: Thank you, Your Honor.

ATTORNEYS: Thank you, Your Honor.

UNIDENTIFIED SPEAKER: Thank you, Judge.

MS. GEIER: Thank you, Your Honor.

THE COURT: Thank you. Have a good afternoon.

* * * * *

C E R T I F I C A T I O N

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, RUTH ANN HAGER, court-approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter, and to the best of my ability.

/s/ Ruth Ann Hager

RUTH ANN HAGER

J&J COURT TRANSCRIBERS, INC. DATE: May 1, 2023